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APPENDIX

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Supreme Court of the United States

OCTOBER TERM, 1969

No. 731

KENNETH R. JONES,

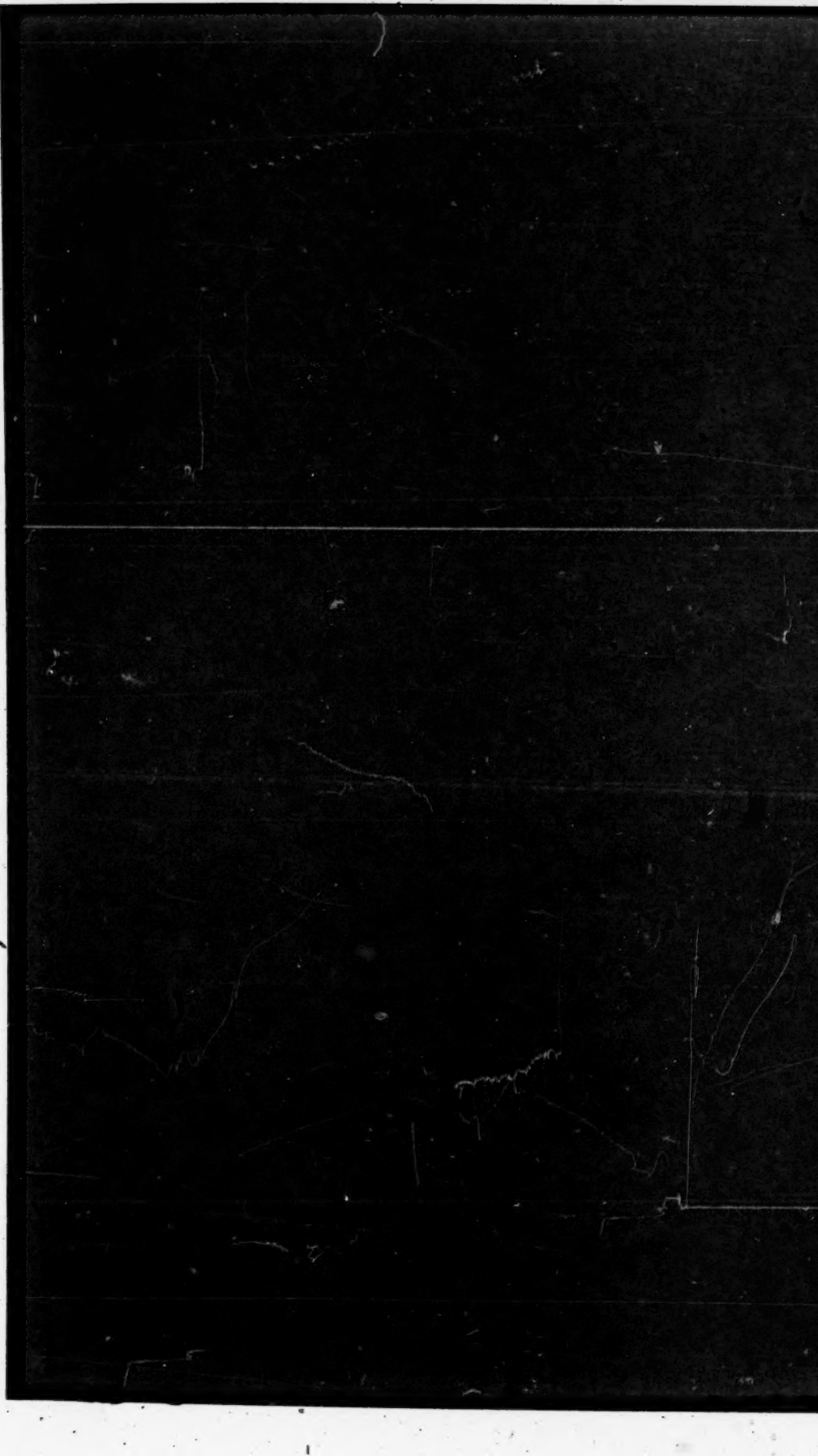
Petitioner,

—v.—

STATE BOARD OF EDUCATION OF AND FOR THE STATE OF TENNESSEE, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR CERTIORARI FILED JUNE 19, 1969
CERTIORARI GRANTED OCTOBER 13, 1969



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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE.
NASHVILLE DIVISION

4887

KENNETH R. JONES, FREDERICK BROOKS
and JAMES MICKEY BOOTH

vs.

THE STATE BOARD OF EDUCATION OF AND FOR THE STATE OF TENNESSEE; TENN. A & I STATE UNIVERSITY FOR NEGROES; THE FACULTY ADVISORY COMMITTEE OF TENN. A & I STATE UNIVERSITY FOR NEGROES; J. HOWARD WARF, Comm. of Edu. of and for the State of Tenn.; BUFORD ELLINGTON, ERNEST C. BALL, THOMAS M. DIVINE, DALE GLOVER, EDWARD L. JENNINGS, JAMES H. JONES, JR., E. H. KENNEDY, MRS. B. A. MCDERMOTT, F. THORNTON STRONG, J. FRANK TAYLOR, DR. D. M. SPOTWOOD, JAMES WILLIAMS and MRS. SAM WILSON, members of the State Board of Education; WALTER S. DAVIS, Pres. of Tenn. A & I State University for Negroes; JOSEPH A. PAYNE, JR., Dean of Students of said University; CARL CRUTCHFIELD, Dean of Admissions of said University; A. B. BOSWELL, Chairman, G. M. SAWYER, GEORGE DAVIS, R. N. MURRELL, LOUIS R. HOLLAND, JAMYE WILLIAMS, MRS. M. B. CROOKS, JAMES M. CONLEY, members of the Faculty Advisory Committee of said University

BASIS OF ACTION: U. S. Constitution—1st, 5th and 14th Amendments; T. 42 USC Sec. 1983 and 1985 (3)—Alleges suspension, etc. from A & I Univ. violation Constitution. Seeking preliminary and permanent injunction.

* * * *

Relevant Docket Entries

DATE	PROCEEDINGS
10- 4-67	Complaint filed with Exhibits A through O.
10- 4-67	Motion for Temporary Restraining Order filed filed by plaintiffs.
10- 4-67	Order Entered: Plaintiffs' Motion for temporary restraining order to require their immediate reinstatement denied; Hearing upon application for preliminary injunction (which shall also constitute a final hearing upon the merits) is set for October 16, 1967, beginning at
10-13-67	Answer filed on behalf of all defendants, certificate of service attached.
10-23-67	Approved Order Entered: Application for preliminary injunction denied; application for permanent injunction taken under advisement; Counsel will file simultaneous briefs, including proposed findings and conclusion, within thirty days from this entry, with an additional ten days for the filing of briefs (Attested copy to attys. of record)
11-22-67	Approved Order Entered: Parties will have additional twenty days from Nov. 22, 1967 to file simultaneous briefs including proposed findings of fact and conclusions of law; with reply briefs due ten days thereafter (Attested copy to attorneys of record)
1-18-68	Opinion of the Court Entered (Attested copies mailed to attys. of record).
1-18-68	JUDGMENT ENTERED: Plaintiffs' action dismissed; Opinion shall constitute Findings of Fact and Conclusions of Law; costs assessed to the plaintiffs (Attested copy mailed to attorneys of record).
1-25-68	Notice of Appeal to the Sixth Circuit Court of Appeals filed on behalf of plaintiffs (attested copy mailed to Hon. Thomas E. Fox).

IN THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Case No. 18,482

RELEVANT DOCKET ENTRIES

DATE		FILINGS—PROCEEDINGS
1968		
Feb.	5	*Certified record* (2 vols. pleadings), filed; and cause docketed
"	5	Appellants' motion for injunction pending appeal or, alternatively, for summary reversal and for advancement of appeal, with attached memorandum and certificate of service
"	10	Appellees' resistance to motion for injunction pending appeal, or, alternatively, for summary reversal and for advancement of appeal, [with one copy of Defendants' brief, judgment and opinion of the District Court attached]
"	23	*Certified supplemental record* (3 vols. transcript), filed
Mar.	7	Order denying Appellants' motion for injunction pending appeal or, alternatively, for summary reversal and for advancement of appeal (Weick, Edwards and Combs, JJ.) Q-70
Apr.	1	Twenty copies of Brief for Appellants
"	1	Twenty copies of Appendix to Brief for Appellants
May	1	Twenty copies of Brief and Appendix for Appellees
"	2	Motion of the United States National Student Association for leave to file a brief amicus curiae
"	10	Order granting motion of United States National Student Association for leave to file brief amicus curiae (Edwards, J.) Q-196

DATE	FILINGS—PROCEEDINGS	
1968		
May 10	Twenty copies of Brief for United States National Student Association, Amicus Curiae	
Aug. 15	Motion of Appellants for advancement of appeal, with proof of service (Granted. Case to be heard in December, 1968—PCW)	
Dec. 13	Cause argued and submitted (Before: O'Sullivan, Combs and Kent, JJ.)	Q-519
" 13	Additional case citations supplementing Appellants' brief (Copies distributed to the Court)	
1969		
Feb. 18	Four copies Appellants' Supplemental Memorandum (Copies distributed to the Court)	
" 19	Judgment of the District Court affirmed	Q-636
" 19	Opinion by Combs, J. 4 pp.	
Mar. 13	Mandate issued (No costs taxed) Opinion with mandate	
Apr. 28	Letter from counsel for Appellants requesting certification of record and transmittal to Clerk of Supreme Court	

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

Civil Action No. 4887

[File Endorsement (Omitted in Printing)]

KENNETH R. JONES, FREDERICK BROOKS, and JAMES MICKEY BOOTH, PLAINTIFFS

vs.

THE STATE BOARD OF EDUCATION OF AND FOR THE STATE OF TENNESSEE; TENNESSEE A. & I. STATE UNIVERSITY FOR NEGROES; THE FACULTY ADVISORY COMMITTEE OF TENNESSEE A. & I. STATE UNIVERSITY FOR NEGROES; J. HOWARD WARF, Commissioner of Education of and for the State of Tennessee; BUFORD ELLINGTON, ERNEST C. BALL, THOMAS M. DIVINE, DALE GLOVER, EDWARD L. JENNINGS, JAMES H. JONES, JR., E. H. KENNEDY, MRS. B. A. MCDERMOTT, F. THORNTON STRONG, J. FRANK TAYLOR, DR. D. M. SPOTWOOD, JAMES WILLIAMS and MRS. SAM WILSON, members of the State Board of Education; WALTER S. DAVIS, President of Tennessee A. & I. State University for Negroes; JOSEPH A. PAYNE, JR., Dean of Students of said University; CARL CRUTCHFIELD, Dean of Admissions of said University; A. V. BOSWELL, Chairman, G. M. SAWYER, GEORGE DAVIS, R. N. MURRELL, LOUIS R. HOLLAND, JAMYE WILLIAM, MRS. M. B. CROOKS, JAMES M. CONLEY, members of the Faculty Advisory Committee of said University, DEFENDANTS

COMPLAINT—Filed October 4, 1967

I

The jurisdiction of this Court is invoked pursuant to the provisions of Title 28, United States Code, Section 1331, this being an action which arises under the Constitution and laws of the United States wherein the mat-

ter in controversy, excluding interests and costs, exceeds the sum of ten thousand dollars. The jurisdiction of the Court also is invoked pursuant to Title 28, United States Code, Section 1343, this being an action authorized by law to redress the deprivation under color of state law of rights, privileges and immunities secured by the Constitution of the United States and by certain Acts of Congress. The rights, privileges and immunities sought to be secured by this action are those guaranteed by the First and Fifth Amendments to the Constitution of the United States, and the privileges and immunities, the equal protection and due process clauses of the Fourteenth Amendment of the Constitution of the United States, and by Title 42, United States Code, Section 1981 as hereinafter more fully appears. This action is authorized by Title 42, United States Code, Sections 1983 and 1985 (3).

II

This is a proceeding for preliminary and permanent injunctions, enjoining defendants State Board of Education, Tennessee Agricultural and Industrial State University for Negroes, its Faculty Advisory Committee, and the other named defendants, in their official capacities, and their agents, employees, successors, attorneys, representatives, and all persons acting in concert with said defendants from continuing to enforce the decisions of defendant University and defendant Faculty Advisory Committee expelling and suspending plaintiffs as students of said institution and from refusing to admit plaintiffs to said defendant University as students because they have from time to time engaged in certain activities protected by the First and Fourteenth Amendments to the United States Constitution. This proceeding also seeks to enjoin defendants from disciplining plaintiffs for participation in the same constitutionally protected activities by probation, suspension, or otherwise, without affording plaintiffs adequate procedural safeguards including proper notice, hearing and opportunity to defend against allegations of misconduct. The action also seeks to restrain and enjoin defendants from any of the above actions in

regard to other students of said university similarly situated as a class more fully hereinafter described.

III

This is a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure brought by the named plaintiffs on behalf of themselves and all other students enrolled or formerly enrolled in Tennessee Agricultural and Industrial State University for Negroes who are similarly situated. The named plaintiffs are all Negro citizens of the United States and of various states thereof who were students in good standing in regular attendance at said University until the events hereinafter described, after which the defendants or some of them expelled or sought to expel plaintiffs and their class from said University and deny them readmission. The claims of the representative plaintiffs are typical of those of the class which are so numerous that joinder of all members in a single action is impracticable. The questions of law and fact are common to the class and the representative plaintiffs will fairly and adequately protect the interest of the class.

IV

Plaintiff Kenneth R. Jones is a resident and citizen of the State of Ohio. Plaintiff Frederick Brooks is a resident and citizen of the State of Michigan. Plaintiff James Mickey Booth is a resident and citizen of the State of Tennessee. All plaintiffs are Negroes who were students in good standing at Tennessee Agricultural and Industrial State University for Negroes until the actions taken by the defendants in June, 1967, hereinafter described.

V

A. Defendant State Board of Education of and for the State of Tennessee, with offices in Nashville, was created by and exists under the laws of the State of Tennessee and as such, is an instrumentality of said state pursuant to Tennessee Code Annotated 49-106. Defend-

ant State Board of Education has responsibility for control and supervision of defendant Tennessee Agricultural and Industrial State University for Negroes pursuant to T.C.A. 49-107. Said State Board acts as Board of Trustees for said University, and is authorized to promulgate rules and regulations governing defendant University pursuant to T.C.A. 49-3208. Said State Board is by law a continuous body or entity and is sued here as such.

B. Defendant Tennessee Agricultural and Industrial State University for Negroes is a public body to wit: A State supported institution of higher learning organized and existing pursuant to T.C.A. 49-3201. Its purpose is to provide higher education for Negroes pursuant to T.C.A. 49-3206.

C. Defendant J. Howard Warf is the Commissioner of Education of and for the State of Tennessee and as such is the chief executive officer of the Department of Education of Tennessee. In his capacity as Commissioner, defendant Warf has responsibility for the general administration of public education in Tennessee, pursuant to T.C.A. 49-102 through 49-104. He is also chairman and a voting member of defendant State Board pursuant to T.C.A. 49-105. Defendant Warf is a resident of the State of Tennessee, subject to the jurisdiction of this Court, and is sued in his official capacity.

D. Defendant Buford Ellington is the Governor of Tennessee and is authorized by law to appoint the State Commissioner of Education and the members of the State Board of Education and is himself a members of said State Board, pursuant to T.C.A. 49-105. Defendant Ellington is a resident of the State of Tennessee, subject to the jurisdiction of this Court and is sued in his official capacity.

E. Defendants Ernest C. Ball, Thomas M. Divine, Dale Glover, Edward L. Jennings, James H. Jones, Jr., E. H. Kennedy, Mrs. B. A. McDermott, Dr. D. M. Spotwood, F. Thornton Strong, J. Frank Taylor, James Williams, and Mrs. Sam Williams are, together with defendants Warf and Ellington, members of defendant State Board of Education. They are sued herein as members of said Board but will hereinafter be referred to collec-

tively as said State Board. They are all residents of the State of Tennessee, subject to the jurisdiction of this Court, and are sued in their official capacity.

F. Defendant Walter S. Davis is the President of Tennessee Agricultural and Industrial State University for Negroes and as such is the University's chief administrative officer charged by law with its control and supervision. By virtue of T.C.A. 4-310, he is appointed by the defendant State Board of Education. Defendant Joseph A. Payne, Jr., is the Dean of Students of said University; defendant Carl Cruthfield is Dean of Admissions of said University; and defendant A. V. Boswell is the chairman of the defendant Faculty Advisory Committee of said University. Defendants G. M. Sawyer, George Davis, R. N. Murrell, Louis Holland, Jayme Williams, Mrs. M. B. Crooks and James M. Conely are members of the defendant Faculty Advisory Committee. All individual defendants are residents of the State of Tennessee, subject to the jurisdiction of this Court, and are sued in their official capacities.

VI

Heretofore, during the academic year 1966-1967, particularly during the months of February, March and April, 1967, plaintiffs or some of them did at various times express themselves in orderly and peaceful fashion through speaking, writing, picketing, assembling and leafletting. Plaintiffs with other students of said University engaged in protest demonstrations, marches, and have signed petitions and grievances. They also have formed or joined student organizations to consider and deal with problems concerning their University. All of such activity is protected by the First and Fourteenth Amendments to the United States Constitution.

VII

The activities related in paragraph VI were engaged in to protest among other things the fact that the defendant University is maintained and operated by the State of Tennessee as an essentially segregated institu-

tion whose enrollment is composed almost exclusively of Negro students. The plaintiffs also sought to protest certain direct results of this segregation including the lack of accreditation in certain fields, and the lack of high academic standing enjoyed by other state institutions of higher learning, and the general denial to them of an equal educational opportunity at the level of undergraduate and graduate studies.

VIII

Plaintiffs also protested the practice of defendant University in interfering with and suppressing students' rights of free speech, assembly, and exchange of ideas.

IX

Plaintiffs also sought to protest peacefully the mass arrests and abuse of students by the Metropolitan Nashville Police Department and the cooperation in such abuse by defendant University, after certain disturbances in north Nashville in April, 1967, which centered around the campuses of Fisk University and the defendant University.

X

As a result of these activities plaintiffs were harassed and intimidated by defendants or some of them by threats to individual plaintiffs, by withdrawal by defendants of University facilities from use by certain student groups with which plaintiffs were affiliated, and, ultimately, in suspension or expulsion by defendants of plaintiffs from said university. Other students, similarly situated and too numerous to name, have been intimidated and deterred from exercising their First and Fourteenth Amendment rights by fear of such expulsion and harassment by defendants.

XI

Sometime on or before June 8, 1967, defendant Faculty Advisory Committee, acting in concert with other defendants expelled and denied readmission to plaintiffs and members of the class they represent because of their

participation in said peaceful protest activities. These expulsions were without notice or hearing, and, upon information and belief, were contrary to disciplinary procedures for students at state colleges and universities in Tennessee and denied plaintiffs due process and equal protection of the laws and denied to them generally rights guaranteed by the Fifth Amendment to the Constitution.

XII

On or about June 8, 1967, defendant Faculty Advisory Committee sought to inform some of the plaintiffs by telegram of its action in suspending them. One such telegram, marked "Exhibit A", is attached to this complaint and made a part hereof. In many instances, plaintiffs' first knowledge of their expulsions came when they presented themselves to the University in the usual manner for registration for the 1967 summer quarter. All were denied admission by defendants without explanation.

XIII

Beginning about June 20, 1967, some plaintiffs and other members of their class were sent letters by defendant A. V. Boswell or other defendants proporting to explain the expulsions and offering hearings to some plaintiffs. Copies of these letters, marked as Exhibits B through D, are attached to this complaint and made a part hereof. The vague, indefinite and uninformative nature of the charges contained in these letters precluded plaintiffs from preparing adequately any defense to the charges. Despite repeated requests to officials of the University, no further specification of charges against plaintiffs and members of their class was provided at this time. Copies of two letters to University officials requesting a specification of charges and other information, marked Exhibits E and F, are attached to this complaint and made a part hereof. These letters were acknowledged but never answered even after the meetings and hearings, hereinafter mentioned, were begun.

XIV

Some of the plaintiffs and other students of the class were invited, after their expulsions, to individual conferences with officials of defendant University. These conferences did not, however, approach the nature of hearings as plaintiffs' attorney was not notified of the meetings and, upon inquiry, was informed that he could not represent plaintiffs at these meetings. At these meetings, the expelled students were not confronted with witnesses against them, were not allowed to examine witnesses, were denied representation by counsel, and no record of the proceedings was taken. Because of this absence of procedural safeguards and the failure to provide plaintiffs and others a hearing prior to their expulsions, defendants denied plaintiffs equal protection and due process of law.

XV

On September 8, 1967, after repeated requests by plaintiffs through counsel, defendant Faculty Advisory Committee notified plaintiffs by letter and telegram that they and others would be granted hearings at which they could be represented by counsel and present witnesses. Copies of several of these letters and telegrams, marked as Exhibits G through I, are attached to this complaint and made a part hereof. Plaintiffs were given less than 24 hours notice of these hearings and were not given any specification of charges or other information requested of officials of the University. Upon protest by plaintiffs' counsel, hearings were rescheduled by the University to begin September 16, 1967, and an alleged "Specification of Charges" was delivered to plaintiffs' counsel on September 14, 1967, only forty hours before the beginning of said hearings. Copies of the alleged "Specification of Charges" for plaintiffs, marked as Exhibits J through L, are attached to this complaint and made a part hereof.

XVI

The "Specification of Charges" provided by defendants in September were in most particulars equally as vague,

uninformative and unspecific as defendants' letters of June 21, 1967, which proported to explain the Faculty Advisory Committee's acts of expelling plaintiffs in June. The charges contained in the September notification in many instances did not specify alleged punishable conduct, and did not state dates or places where such conduct allegedly took place. They did not name witnesses or indicate what testimony they would offer, and failed to provide adequate notice as required by the minimum standards of due process. In addition, the charges placed in September were almost totally different from those alluded to in the June letters. Many of the charges referred to acts which allegedly took place prior to June, 1967, but which were not stated in the June letters as the basis for the defendant Committee's acts of expelling plaintiffs. Other charges referred to alleged conduct subsequent to June 8, 1967, and could not, therefore, have been the basis for the June expulsions. The vagueness of the charges to be considered at the hearings, the lateness of their delivery, the substituting of new charges for those stated earlier in June, and the failure to give notice of witnesses and testimony all had the purpose and effect of nullifying much of plaintiffs' efforts in answering the original charges, diverting plaintiffs' attention and energy in preparing for the hearings, and hindering them in making a defense. This denied to plaintiffs adequate notice and time to prepare a defense and effective aid of counsel in derrogation of their right to due process of law.

XVII

Hearings were held for plaintiffs before the Faculty Advisory Committee on September 16, 18 and 20, 1967, at which times plaintiffs were represented by counsel, witnesses called, and a record of the proceedings was taken. Over objection, plaintiffs were tried on the substitute charges and, in at least two instances, members of the Faculty Advisory Committee who were sitting as the triers of fact testified as witnesses against plaintiffs. Although other witnesses were offered by the Committee, the prime witness against each plaintiff was defendant

Walter S. Davis, President of the University, who, though he did not sit on the Committee, has the ultimate administrative power and duty to affirm or overrule the committee's decision. Defendants or some of them then, in effect, acted as accusers and as triers or reviewers of fact although, it is believed, other deans, administrative personnel and professors of the university, equally qualified and more objective, were available to sit on the Committee for these cases. Plaintiffs were thus denied a hearing by an impartial panel, a denial of their constitutionally guaranteed right to due process of law.

XVIII

Following these hearings the Faculty Advisory Committee issued its "Report of Findings and Decision" concerning the plaintiffs and other students. A copy of this report, marked Exhibit M, is attached to this complaint and made a part hereof. Contrary to the evidence presented, plaintiffs were found guilty of certain acts, including disrespect to President Davis, tainting the reputation of the institution, unusual or undesirable talk and dress, and distributing literature in areas of the University campus devoted to travel, eating and social assembly, but not in areas utilized for study or class purposes. Each plaintiff was suspended from the University for an indefinite period, completing and perfecting defendants' earlier June action of wrongly denying plaintiffs their educational opportunities in derrogation of the rights of free speech and due process as guaranteed them by the First, Fifth and Fourteenth Amendments to the Constitution of the United States.

Other students who had been denied readmission in June, similarly charged and, to the point of the hearings, similarly treated by defendants were not required to present themselves for hearings, but were readmitted to the University by defendants. Copies of the expulsion letters to two such students who were subsequently granted readmission, marked as Exhibits N and O, are attached to this complaint and made a part hereof. This arbitrary treatment of plaintiffs resulting in their expulsions was

a denial by defendants of plaintiffs' right to equal protection of the law.

XIX

Plaintiffs allege that the suspensions and/or expulsions for the reasons set forth above are in violation of the First, Fifth and Fourteenth Amendments to the United States Constitution. Plaintiffs and members of their class have each suffered and continue to suffer irreparable loss, injury and harm by reason of said suspensions and/or dismissals. Their academic careers have been placed in jeopardy and future earning power endangered by damage to their academic records.

XX

Plaintiffs have no other speedy or adequate remedy at law whereby the injury complained of herein may be redressed. Any other remedy which might be available to plaintiffs would be attended by such uncertainties and delays as to deny substantial relief, would result in a multiplicity of suits, and would be vexatious and inconvenient to the plaintiffs, the defendants, and the courts.

WHEREFORE, plaintiffs pray that this Court will advance this case on the docket and order a speedy hearing thereof, and upon such hearing plaintiffs pray that this Court will issue a permanent injunction restraining and enjoining the defendants, their agents, attorneys, representatives, successors and employees, and all persons in active concert and participation with them from:

1. Suspending or expelling plaintiffs and others of the class from Tennessee Agricultural and Industrial State University for Negroes for the lawful exercise of any Federally protected rights, particularly the First Amendment rights of free speech, assembly, and the right to petition for the redress of grievances.

2. Refusing to reinstate plaintiffs and all other students similarly situated as students with the same rights, privileges, and immunities as attached to their status as students at defendant University prior to defendants' acts of suspension, expulsion or discipline as hereinabove described.

3. Refusing to expunge any notation of suspension, expulsion or discipline from the permanent school record of any plaintiff or student similarly situated who was affected by the action of defendant Faculty Advisory Committee or other defendants as hereinabove described.

4. Penalizing, placing on probation, or disciplining members of the class in connection with the orders of the Faculty Advisory Committee or any other matter in the proceedings before this Court.

5. Suspending, expelling or otherwise disciplining plaintiffs or others of their class without affording them the constitutionally guaranteed rights to due process and equal protection of the law.

Plaintiffs further pray that a preliminary injunction issue restraining defendants from all acts enumerated in paragraphs XX(1) through XX(5) above, pending the hearing and determination of the prayer for a permanent injunction.

Plaintiffs further pray that the Court grant such other relief as would appear equitable and just, and that the Court will allow the cost herein against the defendants.

Respectfully submitted,

s/ I. T. Creswell, Jr.
618 Stahlman Building
Nashville, Tennessee, 37201

Robert L. Carter
Richard Bellman
20 West 40th Street
New York, New York, 10018

Attorneys for plaintiffs

EXHIBIT A TO COMPLAINT

WESTERN UNION

TELEGRAM

106P EDT JUN 8 67 CTA361
CT NHC090 NL PD NASHVILLE TENN 8
KENNETH JONES
3816 DANDRIDGE AVE DAYTON OHIO
YOU HAVE NOT BEEN CLEARED TO ENTER THE UNIVERSITY FOR SUMMER STUDY. LETTER WILL FOLLOW.
FACULTY ADVISORY COMMITTEE TENN A AND I STATE UNIVERSITY.

EXHIBIT B TO COMPLAINT

Mr. Kenneth Jones
3816 Dandridge Avenue
Dayton, Ohio

June 21, 1967

Dear Mr. Jones:

The Faculty Advisory Committee has reviewed your record of conduct for the school year 1966-1967. After careful consideration of your record as it appears below, the Committee voted unanimously to deny you the privilege of continuing your education at this university for an indefinite period. Your record reveals that:

> Involved in worm-on-plate incident in cafeteria in an alleged attempt to discredit cafeteria workers; fraud and conspiracy. Participated in riot.

The Committee advised that it is providing an opportunity for you to appear before it for a special hearing at which time you may show cause why this action should not be taken. The hearing may be scheduled until July 15, 1967. You should write to the Chairman of the Faculty Advisory Committee, Dr. A. V. Boswell, requesting that he arrange a schedule for your apearance. If the Committee does not hear from you prior to July 15, 1967, it will consider the above action final. If you cannot meet the July 15, 1967, deadline, please notify the Committee in writing at the earliest possible moment in order that we may assist you in scheduling a time when you are able to appear before the Committee. Under no circumstance are you to return to the campus for any reason other than to appear before the Committee at the time scheduled for your appearance.

Very sincerely yours,
FACULTY ADVISORY COMMITTEE

/s/ A. V. Boswell
A. V. BOSWELL, Chairman

cc:
Mr. and Mrs. Charles E. Jones
3816 Dandridge
Dayton, Ohio

EXHIBIT E TO COMPLAINT

June 22, 1967

Dr. J. A. Payne
Dean of Students
Tennessee A & I University
Nashville, Tennessee 37203
Faculty Advisory Committee
Tennessee A & I University
c/o Dr. J. A. Payne

IN RE: J. Mickey Booth
Frederick Brooks
Robert C. Butler
Kenneth R. Jones

Gentlemen:

The above named individuals, all formally students in good standing at Tennessee A & I State University, have authorized me to represent them. It is my understanding from conversations with them that each of them has been subjected to some disciplinary action by the University resulting in a denial of readmission to the University during the summer session for this year. It is my further understanding that these disciplinary measures were instituted in a highly summary fashion, without any formal notification to the individuals concerned that disciplinary action would be necessary, and without notification as to the nature or cause of the disciplinary action. In fact, these individuals were only informed that they could not return to school after such decision had been finalized, and they were never given the reason or explanation for this action.

While it is quite clear to me that any institution of higher education, either public or private, has the right to admit or deny admission to any student or applicant, it is equally clear that a student at such an institution has the right, if expelled or if denied admission, to know why such admission was denied to him and to know that individual or organization within the administrative structure which made the decision to deny admission or to take disciplinary action.

For this reason I am, on behalf of these individuals, requesting that some proper and appropriate person who can speak for the University give official written notification to each of these individuals as to their status at the University. This notification should explain whether they will or will not be allowed to re-enroll in A & I State University. It should explain the disciplinary action taken against them, the purposes or reasons for such action, and the agency or body that took the action against them. We have reason to believe that it was the Faculty Advisory Committee of the University that was responsible for the expulsions. If this be the case, the notification should list the members of the committee though not necessarily their individual vote concerning any person whom I represent.

This notification can be sent to the above named individuals in care of me at the address set out above, or forward directly to them with copies sent to me.

A prompt reply willbbest serve the interest of all parties concerned.

Sincerely,

/s/ I. T. Creswell, Jr.
I. T. CRESWELL, JR.

ITCJr:pw

EXHIBIT F TO COMPLAINT

July 31, 1967

Dr. A. V. Boswell, Chairman
Faculty Advisory Committee
Tennessee A. & I. State University
Nashville, Tennessee 37203

RE: Albert Bender, Jr. Fred Brooks Calvin M. Conner
J. Mickey Booth Robert C. Butler Kenneth R. Jones

Dear Dr. Boswell:

The above named individuals, formerly students at Tennessee A.&I. State University, have authorized me to represent them in seeking readmission to the University. I am writing you concerning them at the direction of President Walter S. Davis and Dean W. N. Jackson.

It is my understanding that these students, even though already expelled from school, may have a hearing before the Faculty Advisory Committee. I am requesting that these hearings be scheduled sometime between Tuesday, August 8 and Friday, August 11, 1967, at your convenience. Calvin Conner advises me that his hearing is set for August 5. Because I will be out of town then, I hope you can reschedule his hearing with the others.

In order for them to answer the committee and for me to represent them, it will be necessary for us to have more detailed information as to why these students have been denied readmission. Therefore, I am requesting that you give me in writing the specifics of the charges placed against each former student and the findings of your committee which resulted in the disciplinary against my clients. So there will be no misunderstanding, let me explain that I wish to know the particular action or actions which constituted the punished offense, dates, witnesses who testified or other sources of information.

In addition, kindly supply me with a Student Handbook or some other appropriate statement of rules governing Student conduct which would have put these individuals on notice that their alleged actions would subject them to dismissal, and a policy statement outlining the usual disciplinary proceedures used at state universities. If this last request is unduly burdensome on you, tell me where I can have access to these rules and I will copy them.

With this information, I am sure that the hearings will benefit both the university and my clients. This is the second time that I have requested a specification of charges. I trust this will receive your immediate attention as time is growing short before the beginning of the next academic quarter.

Thank you in advance for your co-operation.

Sincerely yours,

/s/ I. T. Creswell, Jr.
I. T. CRESWELL, JR.

ITCJr:pw

CC: Dr. Walter S. Davis
Dr. W. N. Jackson
Mr. Albert Bender, Jr.
Mr. J. Mickey Booth
Mr. Fred Brooks
Mr. Robert C. Butler
Mr. Calvin M. Conner
Mr. Kenneth R. Jones

EXHIBIT G TO COMPLAINT

WESTERN UNION
TELEGRAM

428P EDT SEP 8 67 CTB337
CT NHA387 RX PD 8 EXTRA NASHVILLE TENN
8 315P CDT

2nd tel. 3:50

ATTORNEY I T CRESWELL, GET SIGNATURE
623 STAHLMAN BLDG NASH

(CORRECTED TEXT)

PER YOUR REQUESTS FACULTY ADVISORY COMMITTEE HAS SCHEDULED NEW HEARINGS FOR ALBERT BENDER JR, J MICKEY BOOTH, FRED BROOKS, ROBERT C BUTLER, CALVIN M CONNERS, AND KENNETH R JONES. AT WHICH YOU MAY APPEAR AS THEIR LEGAL COUNSEL. HEARINGS MAY BE HELD 8AM TO 4PM DAILY DURING THE PERIOD SATURDAY SEPTEMBER NINTH THROUGH THURSDAY SEPTEMBER FOURTEENTH ROOM 207 ADMINISTRATION BUILDING. ADVISE DATES AND HOURS THAT YOU SELECT FOR THESE HEARINGS. LETTER FOLLOWS
FACULTY ADVISORY COMMITTEE TENNESSEE A&I STATE UNIVERSITY A V BOSWELL CHAIRMAN

EXHIBIT H TO COMPLAINT

September 8, 1967

Mr. Kenneth R. Jones
Route 4, Box 23
Somerville, Tennessee

Dear Mr. Jones:

The Faculty Advisory Commmittee has reconsidered your case, and on September 6th the Committee agreed to offer you some new hearing dates with the understanding that you may be accompanied by your legal counsel at your hearing.

The Committee has set aside the period from 8:00 A.M. to 4:00 P.M. Saturday, September 9th, through Thursday, September 14, 1967, as the time during which you may come to the University and appear before the Committee for a hearing.

Please wire the Committee, collect, stating the date and hour you wish the hearing. The Committee will hear you at whatever time stated in your telegram to us. The hearing will be held in the Office of the Vice President, Room 207 in the Administration Building.

Sincerely yours,

FACULTY ADVISORY COMMITTEE
A. V. BOSWELL, Chairman

AVB sh

cc: Attorney I. T. Creswell

EXHIBIT I TO COMPLAINT

TENNESSEE [EMBLEM] UNIVERSITY

A. and I. State
Nashville, Tennessee 37203

September 8, 1967

Attorney I. T. Creswell, Jr.
623 Stahlman Building
Nashville, Tennessee

Dear Attorney Creswell:

Previously we have invited several of our students to appear before the Faculty Advisory Committee to determine whether they should be permitted to enroll for the fall quarter 1967-1968. We have your letter before us in which you advised some of these students not to appear before the Faculty Advisory Committee except accompanied by legal counsel. While we are mindful of the fact that on previous occasions we have denied these students the privilege of appearing with such counsel, on September 6, 1967, the Faculty Advisory Committee, in formal session, reconsidered these cases and agreed to offer these students some new hearing dates, with the understanding that they may be accompanied by you as their legal counsel.

The Faculty Advisory Committee has set aside the period from 8:00 a.m. Saturday, September 9 through 4:00 p.m. Thursday, September 12, 1967, as the time during which you and the students are free to come to the University for the purpose of appearing before the Committee for hearings.

We are notifying each of your clients of this action, and they may wire the Committee, collect, stating the date and the hour in which each wishes a hearing. The Committee will hear each student at whatever time stated in a telegram to us. The hearings will be held in the Office of the Vice President, Room 207 in the Administra-

tion Building. We wish to add that the Faculty Advisory Committee sits in executive session for such hearings which sessions are closed to the public including news media.

Sincerely yours,

FACULTY ADVISORY COMMITTEE

/s/ A. V. Boswell
A. V. BOSWELL, Chairman

EXHIBIT J TO COMPLAINT

IN THE MATTER OF
KENNETH JONES

vs.

TENNESSEE A. & I. STATE UNIVERSITY

September 14, 1967

SPECIFICATION OF CHARGES

Please be advised that on Monday, September 18, 1967, at 2 P.M., a hearing will be held before the Faculty Advisory Committee of the Tennessee A. & I. State University on the campus in Nashville, Tennessee, in Room 207 of the Administration Building.

You have previously been notified on a number of occasions that you would be permitted a hearing at which time you could produce evidence in your behalf and otherwise establish your entitlement to readmittance to the Tennessee A. & I. State University.

You are charged with conduct unbefitting a University student in that during the school year you created a disturbance in the cafeteria located within Jane E. Elliott Hall. During that time a "worm" which obviously had not been processed through the kitchen was said to have been found in some food served to one of your fellow students. Your actions on that occasion exemplify a disrespect for University authority.

You are charged with distributing literature and soliciting students, all of which was designed to boycott the registration at the University for the Fall Quarter 1967. This occurred during the Summer of 1967.

You are charged with having been recently arrested by the Nashville Metropolitan Police Department at Fortieth Avenue and Clifton Road upon a charge of disorderly conduct. Pursuant to that arrest, you were convicted

and fined $50.00 by the Judge of the Metropolitan City Court.

You are charged with continuous disrespect for University authority, all of which is a violation of Chapter 4, Student Handbook, "Discipline and Honor", pages 17 and 18, and Chapter 3, "Conduct", page 11.

FACULTY ADVISORY COMMITTEE
Tennessee A & I State
University

Kenneth Jones matter

EXHIBIT M TO COMPLAINT

TENNESSEE A. AND I. STATE UNIVERSITY
Nashville, Tennessee

[EMBLEM]

Office of the Vice President, Emeritus

REPORT OF FINDINGS AND DECISION

Re: Robert Butler, Calvin Connor, Kenneth Jones, James Booth & Frederick Brooks

The Faculty Advisory Committee of the Tennessee A. & I. State University met as it is authorized to do beginning September 16, 1967, for the purpose of conducting hearings concerning the discipline of Robert Butler, Calvin Connor, Kenneth Jones, James Booth and Frederick Brooks, students. These hearings continued through September 20, 1967.

On June 21, 1967, written notices were sent to these students and others advising them that their record of conduct for the academic year 1966-1967 had been reviewed by the Committee and after careful consideration, it was determined that they should be denied the privilege of continuing their education for an indefinite period unless they could show cause why this action should not be taken.

On September 14, 1967, and at the request of Mr. I. T. Creswell, Jr., acting on behalf of the students, further and more specific written charges were furnished.

The letter of June 21, 1967, advised that a hearing would be provided and that the hearing should be scheduled prior to July 15, 1967. However, following some communication between Mr. Creswell and the Committee, it was agreed on September 12, 1967, that the hearings would be conducted beginning September 16. Some changes as to the day on which certain hearings would be held were made at the last minute at the request of the students. Each of the students has been represented before the Committee by the Honorable I. T. Creswell, Jr., Attorney at Law.

At each session the entire Committee was present. The University was represented by Mr. Robert H. Roberts and Mr. Robert F. Hedgepath, Assistants to the State Attorney General. All of the proceedings before the Committee were recorded.

The conduct and discipline of students at this University are governed by *The Student Handbook*, an official publication of the Tennessee A. &. I. State University. It is provided in *The Student Handbook* that matters of conduct requiring severe discipline shall be handled by this Committee. Each of the students mentioned has been charged with the violation of certain regulations enumerated within *The Student Handbook* and categorized therein as "offenses requiring severe discipline."

Throughout the deliberations, the Committee has felt a responsibility both to the University and to these students. This Committee believes that disciplinary action is within the inherent general power of the University to maintain order on its campus and to exclude therefrom those who are detrimental to the University's well being.

The charges against each student have been dealt with separately. After a full and complete hearing rendered to each student, this Committee has unanimously reached the conclusion that in order to maintain the conduct essential to the orderly operation of the University, the following disciplinary action should be taken.

1. ROBERT BUTLER

It appears from statement of counsel that Mr. Butler will not seek readmittance to the Tennessee A. & I. State University. A decision as to his case would be premature until such time as he should seek readmittance.

2. CALVIN CONNOR

In the case of this student, after considering the matters presented, the Committee recommends that he be allowed to enter the University in the Fall Quarter, 1967.

3. KENNETH JONES

We, the Committee find that Mr. Jones has seized upon the opportunity on different occasions to promote unrest

on the campus by such actions as distributing literature designed for that purpose. At the hearing he demonstrated his indifference to the truth by denying that he passed out such literature despite positive statements by cafeteria personnel and the President of the University that he had done so. We have no doubt that this student did not tell the truth when he appeared before us in this regard.

After considering all of the matters before this Committee, we feel that Mr. Kenneth Jones has violated the rules of conduct governing students at this University to such an extent that he should be suspended for an indefinite period. We have found from the evidence presented that the actions of Mr. Jones did constitute violations of the University's regulations governing student conduct and behavior. Mr. Jones has not demonstrated his willingness to observe the minimum standards of propriety in conduct required here.

The relationship a student has to an educational institution requires that he observe certain minimum standards of propriety in conduct so as to insure that the educational functions of the institution can be conducted in an orderly and reasonable manner.

* * * *

s/ Dr. J. A. Payne, Jr.
Acting Chairman

s/ Dr. G. M. Sawyer

s/ Dr. George Davis

s/ Mr. R. N. Murrell

s/ Mr. Louis R. Holland

s/ Dr. A. V. Boswell,
Chairman

s/ Dr. Jamye Williams

s/ Mrs. M. B. Crooks

s/ Mr. James M. Conley

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

Civil No. 4887

(File Endorsement Omitted in Printing)

KENNETH R. JONES, FREDERICK BROOKS and JAMES MICKEY BOOTH, PLAINTIFFS

v.

THE STATE BOARD OF EDUCATION OF AND FOR THE STATE OF TENNESSEE, ET AL., DEFENDANTS

ORDER DENYING MOTION FOR TEMPORARY RESTRAINING ORDER—Entered October 4, 1967

In this action the plaintiffs Kenneth R. Jones, Frederick Brooks, and James Mickey Booth, have filed their complaint, on behalf of themselves and as a class action on behalf of others similarly situated, against the Tennessee State Board of Education, Tennessee A & I State University, the Faculty Advisory Committee of said University, and other state and university officials and agencies, invoking the jurisdiction of the Court under 28 U.S.C.A. Secs. 1331 and 1343, and under the First, Fifth and Fourteenth Amendments to the Federal Constitution.

Briefly, their complaint is that they have been wrongfully suspended or expelled from the University and that they will suffer irreparable injury unless they are permitted to enroll in the University for the current school quarter. In their complaint they make a two-pronged attack upon the action of the Faculty Advisory Committee in ordering their indefinite suspension. First, it is alleged that the action was taken to discourage or punish the plaintiffs, Negro citizens of the United States and students at the said University, in the exercise of their constitutionally protected rights of speech, assembly, and association, and their rights to engage in peaceful dem-

onstrations or marches, and to petition for redress of grievances. Also, the action of the Faculty Advisory Committee in suspending or expelling the plaintiffs is attacked on procedural grounds, it being alleged that they did not receive adequate or timely notice of the charges against them, they were not afforded a sufficient opportunity to call witnesses in their own behalf, and the Committee itself had prejudged the case against them thus depriving plaintiffs of due process of law and denying them the equal protection of the law. The relief sought is a preliminary and permanent injunction directing the plaintiffs' reinstatement and enjoining the defendants from interferring with the enjoyment by the plaintiffs of their constitutionally protected rights.

In addition, the plaintiffs have filed a motion for a temporary restraining order, requiring that they be immediately reinstated as students at the University pending the hearing upon the application for a preliminary injunction.

Since it appears from the complaint that the period for late registration ended September 29, 1967, and that the fall academic quarter at the University in which plaintiffs seek to be enrolled has already begun, plaintiffs allege that unless immediate injunctive relief is granted they will suffer irreparable damage and injury in that they will necessarily fall behind in their academic work and will be subjected to hindrances and delays not imposed on other students.

Nevertheless, after fully considering the complaint and the application for a temporary restraining order, the Court is of the opinion that the existing status should not be changed by the Court prior to and pending an evidentiary hearing. The Court has reached this conclusion primarily for two reasons. First, as shown on the face of the complaint, the plaintiffs were accorded a hearing by the Faculty Advisory Committee of the University at which they were represented by counsel. As a result of the hearing, the Committee entered its formal "Report of Findings and Decision" setting forth its action against the plaintiffs and the reasons therefor. The action of school authorities in suspending, expelling, or

otherwise disciplining students, should not be interferred with by the injunctive processes of a federal court unless the necessity to protect the individual against irreparable harm is clearly manifested. At this juncture the plaintiffs' case is supported only by the ex parte statements in their complaint unsupported by proof. Second, any possible injury or damage to the plaintiffs may be largely minimized by setting an early date for the hearing upon the application for a preliminary injunction.

It is, therefore, ORDERED and ADJUDGED:

(1) That the plaintiffs' motion for a temporary restraining order to require their immediate reinstatement and enrollment at Tennessee A & I State University be, and the same is, hereby denied.

(2) That the hearing upon the plaintiffs' application for preliminary injunction (which shall also constitute a final hearing upon the merits) is hereby set for October 16, 1967, beginning at 9:30 o'clock A. M. in Court Room No. 1, United States Courthouse, Nashville, Tennessee.

/s/ William E. Miller
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

[File Endorsement (Omitted in Printing)]

[Title (Omitted in Printing)]

ANSWER—Filed October 13, 1967

The defendants named in the complaint, through the Attorney General's Office, State of Tennessee, for answer to the complaint filed against them, say:

ITEMS I-V

The defendants admit the allegations in the complaint relative to their identity, and official positions, also the official address of the State Board of Education; they admit the complainants were former students of Tennessee State A & I University, Nashville, Tennessee, and that each of the complainants has been suspended from the University for an indefinite period but not because complainants have engaged in certain activities protected by the First and Fourteenth Amendments, Constitution of the United States; and that this Court has jurisdiction to hear the complaint. However, they (defendants) deny that this is a proper class action because the complainants do not allege that the defendants were suspended for participating in the same activities and the proof shows that the complainants were not suspended for identical conduct.

ITEMS VI-X

The defendants admit that during the academic year 1966-1967, there was peaceful picketing, assemblying, leafletting, demonstrating, marching, and other expressions of protest by members of the student body for various causes but defendants do not know of all the protests engaged in by the complainants nor the purpose of all of their protests. The defendants deny that the complain-

ants or any other students were harassed and intimidated by them (defendants) because of their (complainants and other students) exercising any of their rights guaranteed by the First and Fourteenth Amendments, Constitution of the United States.

ITEMS XI-XIV

The defendants admit that the Faculty Advisory Committee informed certain students by telegram, June 8, 1967, that they had not been cleared for attendance at the University during the Summer, advising that a letter would follow, but deny that this was in concert with any other defendants; that the Faculty Advisory Committee, did on June 20, 1967, send letters to certain students, including the complainants, informing them that they (complainants) were suspended from the University for an indefinite period because of their conduct during the preceding school year, specifying certain conduct, unless the complainants and other students affected presented themselves before the Faculty Advisory Committee for a hearing (hearing to be requested by July 15, 1967) and show cause why they (complainants and other students) should not be suspended, but the Faculty Advisory Committee deny that the letters were too vague, indefinite, and uninformative of the nature of the charges when considered in proper context to amount to a denial of equal protection or due process under the Fourteenth Amendment, Constitution of the United States; that there were some requests made of the Faculty Advisory Committee to make the charges more specific; that the letters were acknowledged without further explanation of the charges except as hereinafter set forth; and that some of the complainants and other students were granted individual conferences with members of the Faculty Advisory Committee in which the students were not permitted to be represented by counsel or confront adverse witnesses except members of the Faculty Advisory Committee themselves, but it is denied that there was anything about these conferences which denied any complainant or any other student equal protection and due process of law as guaranteed by the Fourteenth Amendment, Constitution

of the United States. In addition to the foregoing notices, both complainants Booth and Brooks were talked to by individual members of the Committee at various times about the specific acts or conduct for which they were denied re-admission and complainant Jones came before the Committee prior to the final hearing now under consideration at which time he was specifically informed of the nature of the charges against him.

ITEMS XV-XVI

The defendants admit that the Faculty Advisory Committee, after requests by counsel for the complainants, informed the complainants and other students by letter dated September 8, 1967, that a hearing would be granted them (complainants and other students) in which they could be represented by counsel during the period of September 9 through September 14, 1967 (complainants were not given less than a 24-hour notice of the hearing as alleged in the complaint); and that upon protest of counsel for the complainants, the hearings were re-scheduled for September 16, 1967, and more specific charges with respect to complainants were presented to complainants' counsel, September 14, 1967. Rather than deny specifically the allegations made with respect to these last charges being too vague and uninformative to meet the requirements of equal protection and due process, the defendants generally deny the allegations and would point out to the Court Exhibits J-L to the complaint, the charges about which the allegations are made to show that they (charges and specifications) were adequate to meet equal protection and due process requirements as guaranteed by the Fourteenth Amendment, Constitution of the United States.

ITEM XVII

The defendants admit that hearings were held for complainants Jones, Booth, and Brooks, on September 16, 18, and 20, 1967, respectively; that each of the complainants was represented by counsel and witnesses were called to substantiate the charges; that Dr. Walter S.

Davis, President of the University, was one of the principal witnesses against the complainants; and that he is the ultimate administrative authority at the University with power to affirm or overrule the Faculty Advisory Committee's decisions with respect to suspension of students from attendance at the University.

Defendants affirmatively assert that each of the complainants was informed at the hearing that if for any reason their counsel was of the opinion that additional time was needed to prepare for the hearing, each hearing would be continued for that purpose.

ITEMS XVIII-XIX

The defendants admit that the Faculty Advisory Committee in its report, Exhibit M to the complaint, found some of the charges made against each of the complainants to be well founded and suspended each of the three complainants from attendance at the University for an indefinite period; they deny that the findings of the Faculty Advisory Committee were contrary to the evidence; and they deny that any student who received notice they would not be re-admitted in time were later re-admitted unless the student appeared before the Committee either formally or informally or submitted information to the Committee sufficient in the judgment of the Committee to warrant the Committee changing its order with respect to that particular student.

ITEM XX

Defendants deny that the complainants have no other speedy or adequate remedy except in this Honorable Court. As stated above, complainants were informed at the hearing held for each, if in the judgment of their counsel, additional time was needed to prepare for their defense before the Faculty Advisory Committee, the hearings would be continued for that purpose. As a matter of fact, the decision of the Committee was arrived at only after counsel for the complainants had supplied additional evidence after the hearing.

All other material allegations made in the complaint not specifically admitted or denied are here and now generally denied as emphatically as if specifically denied.

AND NOW HAVING FULLY ANSWERED, the defendants pray that they hence be dismissed without costs.

Robert H. Roberts
Assistant Attorney General

Robert F. Hedgepath
Assistant Attorney General

Thomas E. Fox
Assistant Attorney General
Solicitors for Defendants

For the Defendants:

Mr. Thomas E. Fox,
Mr. Robert E. Hedgepath
Mr. Robert H. Roberts
Office of the Attorney General
State of Tennessee
Supreme Court Building
Nashville, Tennessee

(fol. 38) KENNETH RICKIE JONES

one of the Plaintiffs, called to testify in his own behalf, after having first been duly sworn, was examined, and testified as follows:

DIRECT EXAMINATION

BY MR. BOULT:

Q How much time have you completed there at the school?
A I've completed two quarters.
Q Two quarters?
A Yes, sir.
Q When did you start?
A I started in January of '67.
Q And what kind of grades did you have?
(fol. 39) A I had a B plus average.
Q B plus average?
A Yes, sir.

Q Did you get into any trouble on the campus during those two quarters?
A No, I didn't.
Q Have you attempted to continue your education there?
A Yes, sir, I have.
Q And who did you first continue?

A Well, when I came to—for summer school; I had received the telegram prior to my arriving in Nashville saying that I was not cleared for summer studies, and (fol. 40) that a letter would follow, and this was from the faculty Advisory Committee; so when I returned—the telegram was rather vague, and when I returned to Nashville to actually find out what it was all about, actually, I thought it was something—

Q When did you receive this telegram?

A I received it June 7th.

. . . . . .

Q And what was your next contact with the university?

A Registration.

Q And what happened at registration?

A Well, when I went to pick up my registration material, they didn't have it, and so they sent me to various (fol. 41) offices on campus to find out why my material wasn't ready.

. . . . . .

Q Does it take any special permission?

A No, all you have to do is be in the school in the previous quater, and they have your material for you for the next quarter for registration.

Q Is there anything different about the summer session as opposed to full readmission?

A No, not in registration.

Q Now you say you were unable to find these materials that you are supposed to have picked up?

A Yes, sir.

(fol. 42) Q What were you told?

A Well, I was in the Student Union Building, that's where I would pick up my material, and they told me to go to the Registrar's office, and from the Registrar's office, they told me to go to Dean Payne's office, and Dean Payne was very vague about it, and he sent me to another office on campus. I went to just about everyone on campus.

Q You mentioned earlier something about receiving a letter. Had you received this letter by this time?

A. No, I hadn't. No, I didn't.

Q. Did any of these people that you talked to on registration day give you any reason why your materials were not there?

A. No.

Q. Did they mention the telegram?

A. They asked me if I had received one, and I said yes, and that was all.

Q. No further conversations about reasons?

A. I asked why, and they kept saying that a letter would follow, that's the way it's stated in the telegram.

Q. Did you ask what was going to be in that letter?

A. Yes.

Q. Did they tell you?

A. No.

Q. Did you eventually receive that letter?

[fol. 133] A. Yes, I did.

Q. All right. Now, when did you receive this letter?

A. I received it around July, because it was sent to my home in Dayton, Ohio, and not to me.

Q. You received it when?

A. The first week in July.

Q. Do you recall the date of the letter?

A. June the 21st.

Q. Now what was the date of registration?

A. It was June 13th.

Q. June 13th, that was before even the date of the letter, is that correct?

A. This is so, right.

[fol. 134] Q. What's the usual disciplinary procedure at Tennessee State?

A. Well, first when you do something for punishment, or disciplinary action, someone writes you up, and you go to the senate, the student senate, and then if your case

Q. Someone writes you up, what kind of complaint, student, faculty?

A. It could be anything from a student to faculty, anyone.

Q. All right, continue.

A. And when you go to the student senate, they hear your case and if they feel that it takes further disciplinary action, they send you to the Faculty Advisory Committee, and there the Faculty Advisory Committee hands down a decision.

(fol 50) Q. And were you brought before the student senate?

A. No, I wasn't.

Q. Any idea why not?

A. No, none whatsoever.

Q. To your understanding, is it customary that the actions start with the student senate?

A. I couldn't understand your question.

Q. Do disciplinary actions usually start with the student senate?

A. Yes, it does.

Q. Does it always start with the student senate, to you know?

A. That I don't know.

Q. But it has been your experience, your observation is that it has been?

A. Yes.

Q. Other than the cases before the Court now, do you know of any instances where it did not start before the senate?

A. No.

(fol 51) Q. I hand you a copy of one of the exhibits. This is what they charged you with handing out, is that correct?

A. Yes, this is a facsimile.

THE COURT: What exhibit is that, Mr. Hoult?

MR. CRUSWELL: It's Exhibit 8, Your Honor.

THE COURT: All right. Let me see that Exhibit No. 8.

Q. Did you talk to him?
A. I greeted him, hello, Dr. Davis.
Q. Did you give him anything?
[fol. 63] A. No, I didn't.
Q. Shake his hand?
A. No.
Q. Didn't give him a leaflet?
A. No, I did not.
Q. Did you try to give him a leaflet?
A. No, I didn't.
Q. But you did have them in your hand?
A. Yes, sir, I did.
Q. Did you hand them to anybody on the campus?
A. James Montgomery.
Q. Who is James Montgomery?
A. He is the—was at that time the president elect of the student council; now he's president of the student council.
Q. You showed it to him?
A. Yes.
Q. Did you give him one?
A. No, I tried to.
Q. He didn't take it?
A. No, he told me he didn't want it.

* * * *

[fol. 64] Q. All right. Now during the summer, did you hand out any?
A. Yes.
Q. What was that?
A. It was the "Black Thesis".
Q. Is this which is Exhibit 5 to the record—
[fol. 65] A. Yes.
Q. Does the "Black Thesis", this "Black Thesis" refer in any way to Tennessee State University?
A. Not directly to Tennessee State.
Q. Does it comment on campus affairs?
A. I guess it commented on one that the students of A&I were participating in, and that what the liberation school.

Q. That was off campus?
A. Yes.

* * * *

Q. Mr. Jones, I believe there is also a charge of continuous disrespect for authority or something like that.
A. Yes, sir.
Q. Do you know what that was?
[fol. 66] A. No, I don't.

* * * *

[fol. 69] MR. BOULT: There was a finding by the committee that it was Mr. Jones' purpose to promote unrest in the university, and I don't believe there's any testimony on that point in the record, his motivation.
THE COURT: You can ask him what his motive was.
MR. BOULT: He's answered that with regard to the cafeteria.
THE COURT: That question would be all right.

BY MR. BOULT:

Q. What was your purpose in handing out the "Black Thesis"?
A. Well, it was a news letter that was put out by SNCC, Nashville SNCC that is, and so I just passed it out. Not only on campus but in the north and west Nashville area, just for information.
Q. Was your purpose to disrupt the university?
A. No.
Q. I believe you have—we have already pointed out that the letter does not refer to the university, is that correct?
[fol. 70] A. Yes.
Q. One other thing, Mr. Jones, there's been a reference both in the record and in your last statement to SNCC or Nashville SNCC, is there a difference in those two terms?
A. Yes.
Q. Would you explain that for information of—
A. Well, SNCC, the Student Non-Violent Coordinating Committee, that's out of Atlanta, Georgia, I think, I would say.

Q. Are you associated with that organization?

A. No, I am not.

Q. Go on.

A. And Nashville SNCC is what you could call maybe a friends of SNCC organization.

Q. Are you associated with that organization?

A. Yes, I am.

[fol. 72] Q. Fifty dollars?

A. Yes.

MR. CRESWELL: Your Honor, since this is a matter of public record, and it could certainly be verified, I represented Mr. Jones on it, and I don't know whether it's proper for me to amplify that, there were charges, two findings of guilty, and two different fines. One was fifty dollars for disorderly conduct, the other was twenty-five dollars for vagrancy. A two hundred twenty-five dollar cash bond. This was before Judge Doyle. That has been appealed, and the appeal has not been determined yet.

MR. BOULT: The appeal will be heard de novo, Your Honor.

No further questions.

THE COURT: All right, cross examine.

CROSS EXAMINATION

BY MR. HEDGEPATH:

Q. Kenneth, are you familiar with the blue Student Handbook; it's Exhibit 29, if the Court please.

A. Yes, I am.

Q. Do you recall the hearing which was had in your case which was conducted on the 16th?

A. Yes, I do.

[fol. 73] Q. At that time, did we discuss the Student Handbook and that sort of thing, do you recall that?

A. I don't understand what you mean by that.

Q. Do you recall whether or not there was any discussion at that hearing, any questioning or any talk about the Student Handbook?

A. Yes, there was.

Q. Do you know whether or not the Student Handbook provides that for certain things that are done, the Faculty Advisory Committee will take the action?

A. I am aware of that, but what I thought and what just about everybody else thinks on campus—

Q. I'm asking you are you aware of it?

A. No, I was not aware of the fact that I could be put out of school.

Q. Were you aware, Mr. Jones, when we had that hearing, or are you aware today, were you aware when we had the hearing that the Faculty Advisory Committee can initiate action on its own in certain matters?

A. No, I was not.

Q. All throughout the summer, you have testified that from the early part of June and for the next couple of months, there was this exchange between you and the Faculty Advisory Committee or others over the question of whether or not you would be given a hearing in this matter, is that right?

[fol. 74] A. There was correspondence between me and Dr. Boswell, not me and the Faculty Advisory Committee, to the fact of me having a hearing.

Q. Did you talk about—talk to Dean Murrell about it?

A. No, I only talked to Dean Murrell on one specific charge.

Q. Did you talk to Dr. Payne about it?

A. Dr. Payne would not talk to me about it.

Q. And did you ever go before Dr. Payne's office and he told you you had to appear before the committee?

A. I found out I had to appear before the committee, first of all, in June, by asking about it; and Dr. Payne would not talk to me on the subject.

Q. You weren't told then by Dr. Payne that you would have to appear before the committee?

A. No, it was not Dr. Payne who told me that.

Q. After you received this letter which is dated June the 21st and told that the Faculty Advisory Committee was going to take final action against you unless you let

them know that a hearing was desired, was there ever a hearing following that letter?

A. There wasn't a hearing during the three months of June, July, and August; there was a hearing on September 16th, and this was through communictions by [fol. 75] Mr. Creswell to the administration.

Q. Did you understand the hearing which was conducted on September the 16th to be the hearing that was finally agreed to be had after this June 21st letter?

A. No.

Q. Was there any other hearing?

A. Was there any other hearing? Yes, there was a hearing, June 14th.

Q. Between the 21st of June and September 16th, Mr. Jones, was there any other hearing?

A. No, there wasn't.

Q. At the hearing which was held on the campus on September the 16th, you were represented by Mr. Creswell?

A. This is right.

Q. There was a court reporter who transcribed what went on?

A. Yes, there was.

Q. You were allowed to present witnesses and testified yourself?

A. Yes, I was.

Q. You said upon direct examination that when you got the notice on the 14th—which was dated the 14th of September, in which you were charged with distributing literature, calling for and aimed at a boycott at the fall registration, you said, yeah, I knew what they were talk- [fol. 76] ing about, you did, didn't you?

A. I knew which leaflet they were talking about, but not how the leaflet was directed to me.

Q. Then what you are saying to this Court, and what you said at the committee is this, is it not, that I don't know what I was charged with, it's just that I'm not guilty?

A. No, not that.

Q. What are you saying?

A. I do not know how this leaflet would affect me.

MR. BOULT: I object, calling for legal conclusions for the witness.

THE COURT: Let him answer.

THE WITNESS: I did not know how this leaflet would affect me.

BY MR. HEDGEPATH:

Q. I didn't ask you that, Mr. Jones; what I asked you is this. You testified on direct examination that you knew what literature they were talking about.

A. Yes, I did.

Q. But you denied that you distributed it.

A. Yes, I did deny that I did distribute it.

Q. That was the same situation at the hearing, wasn't it, you knew what they were talking about, but you just said I didn't do it?

[fol. 77] A. Yes, I said it there also.

Q. So that there is really not any question now, nor was there at the hearing on the charge, you knew what they were talking about.

A. No, I didn't, because I did not know how this leaflet was directed or had any meaning or any bearing on my case.

Q. You didn't know what the school meant when they said you are charged with distributing literature?

A. Well, I've been distributing literature, but not that.

Q. You didn't know what they meant when they said that you were charged with distributing literature such as you knew what they were talking about, the kind that was asking to boycott?

A. The charge states that you are charged with handing out literature that asks the students to boycott registration. Now I have passed out material on campus which was the "Black Thesis", which was an information guide, but that is what I will admit to, and that is all that I have done on campus, not pass out the one that was stated for boycott.

Q. Yes. Now, Mr. Jones, understand what I'm saying, I'm not saying you did it, I'm asking you if you

knew the literature they were talking about, and you said, yes.

A. When they stipulated boycott, I did know the [fol. 78] literature that they were talking about.

Q. You pleaded guilty in your hearing after your arrest for disorderly conduct, didn't you?

A. No, I pleaded not guilty.

Q. You pleaded not guilty?

A. Yes.

Q. Now in the June 21st letter, it was stated to you that the committee's action was going to be made final.

A. Well—

Q. Unless you—

A. Well, in my impression, the committee's decision was final because on June the 12th, I applied for my transcript at Tennessee State, and it had on my transcript that on June 7th, you have received a disciplinary dismissal, therefore I thought that their decision was final.

Q. Now I didn't ask you what you thought; I asked you if the letter of June 21st said the action was going to be made final unless you requested a hearing. Is that about what it said?

MR. BOULT: I object; we've been through this several times, and the letter speaks for itself.

THE COURT: Well, that's what it says, yes.

MR. HEDGEPATH: This is the first time I've been over it, if the Court please.

THE COURT: Well, yes, but you may assume that's [fol. 79] what it says, because that's in the letter.

BY MR. HEDGEPATH:

Q. Do you recall that you were told during the hearing or your lawyer was told during the hearing that if there was any other evidence, you could come up with, or if there was any other reason for continuing that hearing at that time, we would be happy to do it?

A. Yes, but I also remembered that the hearing was continued for the purpose of bringing in other evidence against me.

* * * *

[fol. 174] RAYMOND RICHARDSON

a witness called to testify by and in behalf of the Plaintiffs, after having first been duly sworn, was examined, and testified as follows:

DIRECT EXAMINATION

BY MR. BELLMAN:

Q. Mr. Richardson, where do you live?
A. 2600 Aspen Drive, Nashville.
Q. How long have you lived in Nashville?
A. Better than two years.
Q. Where are you employed?
A. Tennessee State University.
Q. What position do you hold at Tennessee A&I?
[fol. 175] A. Assistant professor of mathematics.

* * * *

[fol. 177] THE COURT: What is the purpose of this testimony?

MR. BELLMAN: The purpose of this testimony, Your Honor, goes to the question of academic freedom at the university. The nature—it relates to the grievances and protests that the students have testified to. It relates to our claim that students were denied first amendment rights at the university.

* * * *

[fol. 178] MR. FOX: If the Court please, I would just like to say that certainly the conditions have not been perfect or ideal at that university or any other university, but whether it's been exactly what it should be or not with respect to any—

THE COURT: Of course what we are trying here are the claims of three students that they should be readmitted to the institution on the ground that they did not receive procedural due process in that the notice was inadequate, charges were not sufficiently definite, and thirdly, there is a charge that this action was taken against them to deprive them of their protected rights under the first amendment.

Now how to you propose to show—to connect this up, assuming that you do show by this witness that there was not full academic freedom at this institution, how do you propose to connect that to the action taken by the disciplinary committee? How do you propose to do that?

MR. BELLMAN: First of all, this is one aspect, I believe the testimony will go to show the attitude of the [fol. 179] faculty toward protest generally. We have had considerable testimony from our witnesses that they were involved in protest activities for which they were punished and disciplined. I think it's very clear from Mr. Booth's testimony that he was punished for involving himself in protest activity through leafletting, and I think that what is important at this point is the attitude of those who disciplined him towards protest generally and towards dissent.

THE COURT: I think perhaps on that third point that you just mentioned that this probably would be competent if he knows anything about it.

* * * *

BY MR. BELLMAN:

* * * *

[fol. 181] Q. Could you tell us whether or not any members of the faculty or the university administration contacted you in relation to your involvement with the SNCC organization?

A. Well, actually, I contacted them. Well, let me relate the whole store.

After going to the meeting, I—well, after—I had been present at the meeting. Some students said to me afterwards, you must be very bold to be—to have your name as faculty advisor. I said, why? Why should that mean I would have to be bold, and they said, well, you know that the administration does not look favorably on this organization, and I said, no, I didn't know that.

So then I remembered that I had had a call from the Dean of the University prior to that, and I had tried to return his call, but was unable to.

Q. What is the dean's name?

A. Dean Jackson, and so then I went—I thought maybe I ought to go now and call and find out if it is related to this particular activity. So when I called, he said that I should come to his office the next day, and he did relate to me that the university was opposed to the SNCC organization.

Q. Did he say why?

[fol. 182] A. Well, he said that the organization had disruptive tendencies, and that it would be—it would tend to be for the detriment of the student body.

Q. Who is Dean Jackson? What is his position?

A. He's the academic dean of the university.

Q. Did he state how it would be disruptive?

A. No, he didn't say precisely how. He just said that it had—that the reputation of the organization was one of disturbance and disruption and so on and so forth.

Q. What did he ask you to do?

A. He asked me to withdraw my name as faculty advisor.

Q. Did you agree to do this?

A. Well, I told him I didn't think it was fair for him to ask me to withdraw my name at that point. I said there had been no communications sent to me stating that the organization was looked upon with disfavor, number one, and number two, that I had promised in good faith to the students and based on their—I had promised in good faith that I would be faculty advisor, and based on thier plans for the coming year, I had no objections at all, and I didn't see any reasonable objections I could have on one day when I had made a promise to them on the previous day.

* * * * *

[fol. 184] Q. Would you briefly state what you understood the objectives of this organization to be?

A. As I said, the main objectives of the organization related to working with what they called culturally deprived kids in the ghetto community. This was my primary reason for accepting the position.

Q. Had you ever had any experience with the SNCC organization before?

A. Yes.

Q Where?

A. Well, at Rusk College where I worked before, the president of the college had invited a number of the SNCC workers, regular SNCC workers to come to the campus and they lived in campus housing and the students had a very enthusiastic kind of organization which did go out in the community and teach these kids in the [fol. 185] ghetto community, and they brought many students, many rural and town students to the university —to the college campus, and the relationship between the college and the community in my estimation grew considerably as a result of that.

Q. Did you advise Dean Jackson of this, your prior experience with the organization?

A. Yes. Well, this was the reason I stated to him that I had accepted the position in the beginning and that I had accepted this position in good faith knowing of no previous statement against the organization by the administration. As a matter of fact, I hadn't heard any discussion at all up until that time of the organization. It had been on college campuses where I had attended school and where I had taught, therefore I had no way of knowing what the situation was there.

Q. Did you have any further conversation, maybe not at that time, but any future time, with Dean Jackson concerning protest activity at the university?

A. Yes, on one other occasion.

Q. When was that?

A It was summer.

Q. Summer of this year?

A. Yes, I don't know the exact time.

Q. Could you tell the Court the substance of that conversation?

[fol. 186] A. Well, in essence, he said that I should stay clear of protest movements.

* * * *

Q. Was he cautioning you?

A. Well now, it may have just been a friendly gesture, but this was the statement. He said that there was much

tension on the campus, and there was no—you know, that there was an effort—there was going to be an effort on the part—there should be an attempt on the part of everybody to keep down the tension as much as possible, and that all faculty members should be careful, and to not get involved with protest movements.

Q. When you say protest movements, what do you understand this to be?

A. Well, protest movement can be almost anything. No, that's not true. A protest movement could be any movement where people have grievances and wnat to make [fol. 187] these grievances known to people who can do something about them.

* * * *

Q. Was it your understanding that he was referring to riot situations or to protest through literature and [fol. 188] distribution of literature?

A. Well, it's difficult for me to say. Actually I just sort of took it for what it was worth and said I appreciated his statement. I didn't really ask in detail what he meant.

* * * *

[fol. 190] Q. Could you state generally what is the feeling among students to the rejection of the SNCC chapter?

A. Well, I can only state what they have related to me.

Q. And what is that?

A. And many students have said that they were quite —well, they have had lots of admiration for the organization, and they felt it was a good thing, and they would like to participate, but they were fearful that their participation would bring about reprisals against them.

THE COURT: Now do the rules of the university require that when a group of this kind wants recognition, that the administration must recognize the group [fol. 191] itself? In other words, the administration has a say so in the matter?

THE WITNESS: Yes.

THE COURT: The rules do so provide, is that correct?

THE WITNESS: Now I can't—let me say what I know precisely. I don't know what the rules are. I only know what the general procedures were at the time of this organization.

THE COURT: What are the rules on this? Are they set forth in this manual?

MR. BELLMAN: I believe they are set forth in the handbook. There is a section called "organizations". Our understanding that organizations first must be cleared by the student council and then assuming that approval is granted by the student council, must be granted by the administration.

THE COURT: Yes, but I thought he testified that the student council in this case did not want to recognize this organization.

MR. BELLMAN: That's correct.

THE COURT: Then the procedure which is provided for in the handbook was not complied with?

MR. BELLMAN: I believe that the procedure was complied with.

[fol. 192] THE COURT: Well, it was turned down, in other words.

MR. BELLMAN: It was turned down by the student council.

THE COURT: Then how does this reflect any adverse attitude on the part of the administration, if the students themselves turned it down?

* * * *

[fol. 195] Q You testified that you are familiar with the student protest movement on the campus.

A. Yes.

Q. And that you have talked to many students?

A. Yes.

Q. What do you understand to be the substance of that protest movement?

A. The students protested—well, there were many leaflets handed out and these leaflets concerned items regarding the burning of the house where the student was killed in the fall. They concerned items about food in

the cafeteria, about numerous campus activities which they may have objected to one aspect or another of. They protested concerning the traffic situation. I remember one in particular where that was the subject of the leaflet.

Q. Was any of the leafletting activity disorderly?

A. Not that I know of; I never witnessed any.

Q. Was it disruptive to the—your personal ability to teach?

A. No.

Q. Do you have any knowledge of its being disruptive to any other faculty member's ability to teach?

A. Not to my knowledge.

Q. Would you charactize it as disruptive in any [fol. 196] way?

A. No.

Q. You stated that students were somewhat fearful of involving themselves in protest activity. Would you amplify that in any way, what they—what occurred—who has occurred on the campus which might have or which might be the reason for this fear or what they state to be the reason for their fear?

A. Well, they have stated that they fear that there would be reprisals against them, and they point to things that have happened in other instances, in other cases.

Q. Such as what?

A. Well, these are things which are only—as far as I am concerned, these are things which only they could relate to me, because I wasn't there at the time, but they say there were students who were put out of school previously because of their activities in sit-ins and so on.

Q. Do they specifically refer to students dismissed who later were vindicated by this Court's opinion in the Knight case?

A. Yes.

* * * *

[fol. 197] Q. Is it your feeling—let me restate that.

Would you say that some of the better students at the university have involved themselves in the protest movement?

A. Yes.

* * * *

[fol. 198] CROSS EXAMINATION

BY MR. HEDGEPATH:

* * * *

Q. Am I assuming correctly when I assume that you have been retained as assistant professor for this year at A&I State University?

A. Yes.

Q. In other words, you haven't been reprimanded by your sponsorship of the would-be SNCC student organization, have you?

A. No.

Q. Was any of the literature which you describe as not being disruptive handed out in your classroom?

A. No.

* * * *

[fol. 203] MR. CRESWELL: And since we feel we didn't have notice, we feel we should now bring in some other evidence and some other witnesses that we would have had had we had proper time to prepare for this, that the university had all summer to prepare their case.

THE COURT: I think you could merely make a statement to the Court about witnesses you could have called if you had had an opportunity to do so and state what you would have proved by those witnesses. I don't see [fol. 204] why we have to go through all of these things here. It's the function of the committee to provide a hearing before the committee.

MR. CRESWELL: We will have them and we will proffer them, and you can rule.

* * * *

[fol. 214]

TRANSCRIPT OF PROCEEDINGS—October 17, 1967

DR. WALTER S. DAVIS.

a witness called to testify by and in behalf of the Plaintiffs, after having first been duly sworn, was examined, and testified as follows:

DIRECT EXAMINATION

BY MR. CRESWELL:

Q. Dr. Davis, would you state for the record, please, your occupation?

A. President of Tennessee A&I State University.

Q. I see, and how long have you held that job, sir?

A. I'm beginning my twenty-fifth year.

Q. Prior to assuming the presidency of Tennessee A&I State University, where were you employed? Where were you employed prior to that?

A. At Tennessee A&I State University.

Q. What was that, sir?

A. Professor of agriculture.

* * * *

Q. Would you also tell us for the record what your [fol. 215] degrees are, what your preparation was for holding the presidency?

A. BS, MS, PhD.

Q. BS in what?

A. Agriculture.

Q. From?

A. Tennessee State University; MS from Cornell; and PhD from Cornell University.

Q. In what field, sir?

A. Agriculture.

Q. Agriculture?

A. Yes.

Q. Where do you reside?

A. In the president's residence.

Q. Where is that, please, sir?
A. On the campus of A&I State University.
Q. Do you have another residence?
A. Well, of course, I have a home, I have a ranch with a ranch house on it.
Q. Where is that, sir?
A. Dickson County.
Q. Dickson County. Is it characterized as a ranch or a farm?
A. Ranch, cattle ranch.
Q. I see. What is approximately the size of A&I's [fol. 216] student enrollment?
A. Approximately between forty-seven and forty-eight hundred.
Q. And can you give use some idea of the racial make-up of those students?
A. Predominantly Negro.
Q. Do you have any percentage or number?
A. No.
Q. Are you aware, sir, of the statutes that created and maintain A&I, the state statutes that govern the establishment and maintenance of this institution?
A. Basically.
Q. Is it true that these statutes describe A&I as the State University for Negores, and lists its function as the training of Negro students in the state?
A. Basically. That's the way it came into being; it's been modified several times.
Q. Has this language been modified in the latest edition of the Code?
THE COURT: What does the Code say? That's a matter I can take judicial notice of.
MR. CRESWELL: Fine, Your Honor, we'll move on from that.

BY MR. CRESWELL:

Q. As president of the University, Dr. Davis, what [fol. 217] are your general functions? How would you describe your function?
A. To administer the university.

Q. Can you be a good bit more specific? Without going into great detail?

A. No, you ought to know administration as well as I do.

Q. I have some idea, but you ought to be able to explain to the Court what they are.

A. Administer the university.

Q. Fine, Dr. Davis. Do you have any responsibility for the selection and hiring of your subordinate administrative personnel?

A. Yes, that's one of my duties and responsibilities to recommend—

Q. Recommend?

A. —to the State Board of Education.

Q. Is it the state Board of Education that has final authority?

A. Right, they do all employing.

Q. I would like to call your attention to the Faculty Advisory Committee; you are familiar with that organization?

A. Yes.

Q. Is it one of your duties as the chief administrator [fol. 218] of Tennessee A&I State University to appoint the members of that committee?

A. Right.

Q. Did you in fact appoint the members of the present committee?

A. Yes, I did.

Q. Can you recall for us, please, sir, when you appointed this committee?

A. Oh, they are appointed every year, that's an annual fact.

Q. Is this at the beginning of the school year or sometime in the summer?

A. The beginning of the school year.

Q. When did you last then appoint a Faculty Advisory Committee, Dr. Davis?

A. This particular one, during the fall of last year.

Q. During the fall of last year. You have not appointed a new one for this year?

A. In the process now.

Q. In the process now. I see, sir.

A. Yes.

Q. Is it also your function to appoint the other committees of the university that are composed of either faculty or administrative personnel?

[fol. 219] A. I have a committee made up of the chief officers of the university, and I actually do the appointing, I never appoint them without conferring with that committee.

Q. So if I understand you, you do appoint other faculty committees?

A. With the advice and—

Q. Advice and consent of your executive committee?

A. That's right.

Q. Who appoints the executive committee?

A. They get that position by—they get that appointment by position. There are certain positions—

Q. Is this a school rule or by state administrative or state Board of Education?

A. School administrative policy.

Q. That are set by whom, sir?

A. Schools across the country.

Q. Schools across the country?

A. Yes, that is the general practice.

Q. Is there a general rule that governs your school, Tennessee A&I University?

A. No, not beyond just being good school practice, just like having commencement, it's a good school practice.

Q. I understand this, but who established the fact that certain positions or offices would be represented on the executive committee?

[fol. 220] A. That's what you study for. You get that study, college and university, in school administration.

Q. I'm sorry, sir, if I'm not being clear.

A. That's good school administrative policy.

Q. You are saying that certain positions are automatically represented on the executive committee, and no matter who holds that position, those persons will then be members of the executive committee, is this correct?

A. That's correct.

Q. Can you name those positions?

A. President, vice-president, administrative assistant to the president, the executive assistant to the president, the dean of faculty, the dean of students, and the director of finance.

Q. All right, sir. Now there is some—this practice of having these people sit as an executive committee, was this practice established by someone in the university, or was this practice dictated by the State Board of Education, sir?

A. No, the faculty at the university, we did that ourselves.

Q. At faculty meeting?

A. Faculty workshops, we have had faculty workshops.

Q. And this was established by the faculty?

A. Yes, years ago.

[fol. 221] Q. Years ago?

A. Yes, based on good school practice and administration.

* * * *

Q. * * * I'm going to name the members as I understand on the Faculty Advisory Committee, and if any of these members are not on that committee, I wish you would tell me, and if they are, I wish you would tell me how many times they have been reappointed or for how many years they have served.

A. I wouldn't know.

Q. Would you have any idea?

A. I would know one year or seven; I have an idea whether it's one year or seven years, but—

[fol. 222] Q. You would be able to recognize one year?

A. Yes.

Q. Are you agreeable to try to give me this information? Let me run through the list.

A. Pose your question.

Q. Dr. A. V. Boswell, chairman; has he served before?

A. Yes.

Q. How many years?

A. Several years, I don't know.

Q. Has it been more than five?
A. Oh, I'm sure it's been more than five, I would guess.
Q. Yes, sir. Dr. J. A. Payne. Has he served more than one term?
A. Oh, yes.
Q. Would you say he has served more than five?
A. I wouldn't try to say how long.
Q. Dean Mable Crooks.
A. Yes, she's been several years.
Q. Several years. She's not a new member?
A. No.
Q. Dr. George Davis?
A. He would be relatively new. I don't know.
Q. Do you know if last semester was his first?
[fol. 223] A. I wouldn't know.
Q. If last year was his first?
A. I wouldn't remember that?
Q. Do you know if "relatively new" means more than one year?
A. Relatively new might mean one year, two years, or three years.
Q. Specifically with Dr. Davis, does it mean more than one year, even if—
A. I can't recall, I told you.
Q. You don't remember. Fine.
A. But he's a new member.
Q. Dr. D. M. Sawyer.
A. Sawyer hasn't been on there as long as Payne and Boswell, but a little longer than George Davis.
Q. Fine, thank you, sir. Dr. R. L. Holland.
A. He's been on there several years.
Q. Several years. Dr. Jamie Williams.
A. Relatively new.
Q. Relatively new?
A. Yes.
Q. Can you say more than one?
A. No.
Q. Academic year?
A. No.

[fol. 224] Q. You don't remember appointing her last year?

A. No.

Q. Dr. R. M. Murrell, Dean Murrell?

A. He's been on there several years.

Q. Thank you. And Dr. James M. Connelly?

A. Relatively new.

Q. Relatively new. More than one year?

A. Yeah, he's more than one year.

Q. A general question on this same line. Were there any members that you appointed last September to the best of your recollection who were appointed for the first time?

A. I wouldn't know.

Q. You wouldn't know. Can you tell me, Dr. Davis, which of these members of the Faculty Advisory Committee also serve on the executive committee and to help you, I will read the list again if you like.

A. You read the list.

* * * *

[fol. 225] Q. Can you tell me the position that Dr. Sawyer holds that qualifies him for—

A. Executive assistant to the president.

Q. You said Dr. Davis does not; how about Dean Mable Crooks?

A. Dean of Women.

Q. Dr. J. A. Payne?

A. Dean of students.

Q. Dean of students. Dr. A. J. Boswell?

A. Vice-president emeritus.

Q. Thank you, sir. Fine, thank you, sir.

In establishing this Faculty Advisory Committee, or appointed its members, sir, are you also aware and able to [fol. 226] talk, tell the Court of its function? For instance, do you know, sir, how frequently it meets?

A. You mean the student disciplinary committee?

Q. I mean the Faculty Advisory Committee.

A. The Faculty Advisory Committee?

Q. Yes, sir.

A. As often as necessary, and I don't know how often that is.

Q. As often as necessary, to your knowledge, do they occasionally meet during a semester or during a quarter?

A. Any time they have a discipline case or do something that is necessary to advise the students.

Q. Fine, think you, sir. When they meet, do you sit with them?

A. No.

Q. Never do you sit with them as a member of the committee?

A. No.

Q. As an ad hoc member?

A. No.

Q. What is the function of the Faculty Advisory Committee, sir?

A. The function of the Faculty Advisory Committee is to uphold the student handbook in toto and we have supplied you with a copy of that.

[fol. 227] Q. Yes, sir, thank you, you did.

When you say uphold the student handbook, would it be a fair characterization to say this is a disciplinary committee, student disciplinary committee?

A. That's one of its functions.

Q. What other functions does it have?

A. To rehabilitate students. It's not all discipline, it's to advise them as well as discipline.

Q. Discipline, rehabilitation, advice?

A. Yes, advise them in their activities that are in conflict with the contents of the student handbook.

Q. Yes, sir. Now do—

A. By the way, that's part of our contract with the Southern Association, we are rated by the Southern Association, and they require us to have a handbook and to abide by the handbook.

Q. Yes, sir. Is it the general policy at the University of Tennessee A&I State University for the committees as they meet to report to you on an annual basis or on a quarterly basis or at any regular period of time, sir?

A. As often as necessary.

Q. As often as necessary?

A. If it's something serious in nature that they would bring it to my attention.

Q. But I understand then from your answer, there is [fol. 228] no set policy that each committee must make an annual report to your office?

A. Oh, yes, they make an annual report.

Q. There is an annual report?

A. Composite report.

Q. Is there a quarterly report based on every academic quarter?

A. They may or may not.

Q. Depending upon the various circumstances?

A. Yes.

Q. Does the Faculty Advisory Committee report to you periodically at a more frequent interval than on an annual basis?

A. Oh, yes, if they have something of a serious nature.

Q. But do they—

A. If it's not so serious, it's just a matter of routine, they do not report.

Q. Do they submit to you the minutes of their meetings?

A. They have them available that I may—

Q. They have them available for your inspection?

A. Yes.

Q. When this body sits in its capacity of disciplining students, does it sit an an autonomous body, or does it [fol. 229] make recommendations to you, sir, for final action?

A. They take the actions and pass them on to me, and I have the privilege of vetoing them.

Q. You have the privilege—

A. I have veto power that I may exercise or not exercise.

Q. There's no positive duty for you to review their findings?

A. Only to determine whether I feel I should veto the action.

Q. Yes, sir. And the determination as to whether you should review, veto or affirm, is this left up to your own determination, Dr. Davis?

A. Well, in relationship to my contract with the Southern Association, with the State Board of Education, those guidelines.

Q. Yes, sir, but the decision as to whether the case should be vetoed is your decision, is that correct?

A. In relationship, based upon the standards of the Southern Association, and State Board of Education.

Q. Can you tell us what those guidelines are that govern?

A. Of course that would take three or four years in school to do that. I can't go into all of that to tell you.

[fol. 230] Q. There are no guidelines that you can explain to us and to the Court in a short period of time in the space of a few minutes?

A. No more than a general statement that the Southern Association is one of the high standing organizations that rate colleges and universities in the south.

Q. Yes, sir. Now—

A. And which have well know, and it's based upon high academic standards, has conceived of in this country, and beyond that, I couldn't get down in details telling you all of the standards of the Southern Association when they have volumes.

Q. Yes, sir. I'm not interested in the standards of the Southern Association except as they relate to the Tennessee State—

A. They relate, we are bound by them, we must abide by them.

Q. I'm confused. Does the Southern Association set the standards which govern your decision to review a Faculty Advisory Committee decision?

A. Yes.

Q. And can you give us some idea of what those standards are? What do you consider, sir, when you decide whether or not to review the decision of the Faculty Advisory Committee?

[fol. 231] A. Only when they are making decisions that would be in conflict of the Southern Association.

Q. What kind of things?

A. I would have to go back into it like you do in your law cases and we would be here a week going back into each one of those.

Q. Thank you, Mr. Davis.

A. But if—I assure you if we violate it, we won't be in the Southern Association long.

Q. Yes, sir.

A. And we have never been on probation.

Q. Yes, sir. Now you stated earlier that you had given me a copy of the handbook, and I believe in the handbook it states that there are certain alternative disciplinary procedures, and I believe also you stated at the hearings that there were some numerous disciplinary channels and rehabilitative channels.

Could you outline for the Court, sir, what are the alternatives to discipline by the Faculty Advisory Committee?

A. All the principles of guidance. Now again I wouldn't go into that, that's the whole text on guidance.

Q. Specifically, sir, what offices, what administrative personnel other than the Faculty Advisory Committee, what organizations within the administrative framework [fol. 232] of the school deal with discipline problems other than the Faculty Advisory Committee?

MR. FOX: May it please the Court, I wonder if counsel is not going pretty far afield here? It seems to me like it's proper to show the qualifications of the committee and how it works, but when you get into the details about some of the channels for rehabilitation and something of that sort—

* * * * *

MR. CRESWELL: This is relevant, sir, in that my understanding of some of the case law dealing with administrative remedies is one that the courts must look to is the alternative to summary dismissal, what other alternatives they had. This does to a due process argument.

THE COURT: I don't quite see it. Do you mean—what would that have to do with the action of this committee?

MR. CRESWELL: It would have to do, sir, if there [fol. 233] are other disciplinary channels, and I will get to the fact that the student handbook does list, that there is a men's senate and women's senate that do handle severe discipline and disciplinary problems and refer cases.

THE COURT: You can ask him about the senate procedure; that's already been gone into.

BY MR. CRESWELL:

Q. Dr. Davis, is there a men's senate and women's senate?

A. Yes.

Q. What is that?

A. To handle cases that do not involve severe discipline. Severe discipline cases are handled by the Faculty Advisory Committee.

Q. You are familiar with the handbook, aren't you, sir?

A. Yes, I am.

Q. And you say that the senates, the men's senate and the women's senate, are to handle cases involving discipline, but not severe discipline?

A. I'll put it the other way around.

Q. Yes, sir.

A. Would be—one of the functions of the Advisory Council is to handle cases involving severe discipline, and [fol. 234] they are spelled out in there.

Q. One of the—

A. That's all I have to say about it.

Q. One of the functions of which?

A. One of the Faculty Advisory Committee's functions is to handle cases involving severe discipline.

Q. Yes, sir.

A. And that's the statement in your handbook.

Q. Yes, sir.

A. And then those cases of severe discipline are spelled out in that, and that I have nothing to add to that.

Q. Yes, sir.

My question now is whether the men's or women's senate handle cases involving severe discipline?

A. And I answer you by saying administratively the Student Advisory Council is to handle cases involving severe discipline and those are spelled out in the handbook.

Q. Your answer is, yes, they do handle cases of severe discipline.

A. The Student Advisory Committee.

Q. Student Advisory Committee?

A. I mean the Faculty Advisory Committee.

Q. All right, my question is does the men's senate or the women's senate handle cases involving cases of severe discipline?

[fol. 235] A. And I answer you again, the Faculty Advisory Committee handles cases involving severe discipline and severe discipline is pointed out in the book.

MR. CRESWELL: I am asking about the men's senate and the women's senate, and his answer concerns the Faculty Advisory Committee, and I wish you would instruct him—

THE WITNESS: I have answered you.

THE COURT: As I understand, he said severe disciplinary cases are handled by the Faculty Advisory Committee. Doesn't that answer your question?

MR. CRESWELL: No, sir, doesn't. I know—

THE COURT: Answer specifically whether the men's senate or women's senate handles severe cases.

THE WITNESS: No.

THE COURT: All right.

BY MR. CRESWELL:

Q. Dr. Davis, I'm going to hand you a copy of the 1966-'67 student handbook, problems relating to discipline, and ask you to read the second paragraph, please, sir.

* * * *

[fol. 236] THE COURT: What page is this?

MR. CRESWELL: I have pointed Dr. Davis' attention to page 16, the second paragraph.

BY MR. CRESWELL:

Q. Would you read the second paragraph, please, Dr. Davis?

A. "The men's and women's senates will handle offenses requiring discipline and severe discipline. Whenever the discipline of an individual by a senate body reaches a point where further discipline is perhaps necessary and could lead to dismissal, the case is then referred to the Faculty Advisory Committee with recommendations from the Senate body."

Q. Yes, sir. Now it did say that the men's and women's senates handle offenses requiring discipline and severe discipline?

A. If you take it out of context, it means one thing and—

Q. We'll follow that up. In handling cases requiring severe discipline is to refer the cases from the senate to the Faculty Advisory Committee, is that how it read?

A. No, that's absolutely up to the Faculty Advisory Committee.

Q. Which is up to the Faculty Advisory Committee?

[fol. 237] A. How to handle all cases involving severe discipline.

* * * *

[fol. 239] Q. Yes, sir. Is dismissal one of the judgments that the Faculty Advisory Committee can hand down [fol. 240] against a student?

A. That's right.

Q. Would that be an indefinite dismissal, or dismissal for a period of time, or permanent dismissal? Can they do any of these, all of these? What kind of dismissal? This is the question. We get into semantics.

A. All of ours are indefinite suspension.

Q. Yes, sir, thank you very much.

You also mentioned in your earlier testimony that there are certain rehabilitative functions of the Faculty Advisory Committee. Are there other rehabilitative agencies with the university?

A. Oh, yeah. Whole guidance program, the dean of women and her entire staff, dean of men and his entire staff.

* * * *

[fol. 241] THE COURT: They were not taken before the senate, and the senate was not involved with them. What is your point in that?

THE WITNESS: Judge, may I say this? That's a common practice with us. Every year we have many cases that go through the year where we are trying to rehabilitate them, and when the year is up, those who have not been rehabilitated, then the Faculty Advisory Committee reviews all of those cases, and some they dismiss for the—I

mean indefinitely, and some they reprimand, and allow to return.

BY MR. CRESWELL:

Q. Is the usual policy to take these dismissals before offering the students a hearing?

A. Oh, yes, every year.

Q. Every year?

A. We had fewer this year than any other year.

* * * *

[fol. 242] Q. Yes, sir. Can you give me the policy of the school relative to students who are arrested?

THE COURT: How's that? What was that question?

MR. CRESWELL: I asked him what the school's [fol. 243] policy was in reference to students who were arrested for—arrested for criminal charges, Dr. Davis?

THE WITNESS: Those that involve misconduct may receive severe discipline.

BY MR. CRESWELL:

Q. Is this a permissive thing? The school does not have to—my understanding when you said "may", there is an alternative that a student may be arrested for misconduct, but not be expelled from the school. There is this alternative?

A. So long, until he has due process. After due process now, and he's dismissed—misconduct, then he's dismissed.

Q. Are you saying that after his case, has been tried and appealed and reached a final judgment, and he is found guilty, he is automatically dismissed?

A. Yes, if it involves misconduct.

Q. And what—

THE COURT: I believe he said that they would have to accord him due process, that was the Knight case, they would have to independently determine the basic conduct involved to see whether or not it violated the—

MR. CRESWELL: Yes, sir. With all respect to the Court, I don't believe he said anything about an independ- [fol. 244] ent determination.

THE COURT: He said due process, accord him due process, those were his very words.

MR. CRESWELL: Yes, sir. Could I establish his understanding of due process?

THE COURT: All right.

BY MR. CRESWELL:

Q. When you say due process, Mr. Davis, what do you mean by this?

A. I mean everything that due process involves.

Q. Yes, sir. In disciplining a student that has been arrested for a charge that involves misconduct, does the university make any independent investigation beyond the fact that—of an arrest and a conviction?

A. It does.

Q. It does?

A. Yes.

Q. And what is the purpose of this, sir?

A. Well, to be judging intellingently about the case.

Q. Are you a part of that investigation?

A. No, I am not.

Q. Can you outline the policy, the disciplinary policy of the administration and the Faculty Advisory Committee in terms of students who distribute critical literature, [fol. 245] literature critical of the university or of the administration?

A. Yes, we in recent months or years maybe, particularly last year, we noticed a type of inflammatory literature designed especially to incite students to riot and to boycott registration and to destroy the place, and of course just to disrupt things in general.

Q. And your policy relative to this—

A. To that would be—that is a type of conspiracy.

Q. You have charactized literature, but my question was in reference to literature critical to the administration.

A. To that part that would disrupt the university, the peace and tranquility and normal operation of the university, we are opposed to it.

Q. Do you feel that a piece of literature which suggested or asked students to boycott registration is a harmful piece of literature?

A. Oh, yes.

Q. Do you feel that a boycott of registration is an illegal act or—

A. What did you say?

Q. Do you feel that a boycott of registration is an illegal act or a destructive act?

A. I think it's encroachment upon the rights of others, the academic rights of the university and other students.

[fol. 246] Q. I'm sorry.

A. I said an encroachment upon the rights of the other students who want to go to school.

Q. Now I can see that—I'm not asking you—well, specifically ask you, if a boycott of registration does not mean stopping other students from registering if those students who are boycotting do not stop other students from regestering.

A. We have never been confronted with that. We have been confronted with where they were trying to stop all students.

Q. Have you been confronted with where they were trying to stop all students?

A. I've been confronted with an effort; the effort failed; the students didn't go along with it.

Q. What was that effort?

A. The counsel presented that in written form to you, and I would refer you to it to read it.

Q. Dr. Davis, I'm going to hand you a two-page mimeographed document that's stapled together. Is this the piece of literature?

A. That's what I'm talking about.

Q. Would you like to look at it, sir?

A. No.

THE COURT: What exhibit is it? Do you have an [fol. 247] exhibit number?

MR. FOX: Six.

BY MR. CRESWELL:

Q. Can you recognize it without reading it, sir?

A. Yes.

Q. Do you feel that this piece of literature was harmful to the university?

A. I know it was; could have been

Q. How, sir?

A. The intent was to generate harm, to block the university and get students all stireed up and not wanting to register.

Q. Let me offer this to you again, sir, and point to language that is attempting to—

A. No, I'm not—

Q. Are you refusing to answer the question?

A. I'll answer it, but I'm not going to read it.

MR. HEDGEPATH: What is the question?

MR. CRESWELL: I asked him if he could point to language herein—Your Honor I wish you would assist me—

THE WITNESS: I'll present the entire letter as harmful.

MR. HEDGEPATH: I think the witness has said the entire document was harmful, and that portion calling [fol. 248] for boycott was particularly harmful.

MR. CRESWELL: I'm not asking you to testify for him.

MR. HEDGEPATH: You've testified for two days.

THE COURT: Well, let's get along. The whole document is here, and I can see it and evaluate it.

MR. CRESWELL: Yes, sir, I'm particularly interested in his feelings.

THE COURT: He's already given his feelings that the entire document was calculated to interfere with the rights of other students and the administration.

BY MR. CRESWELL:

Q. Just one other question relative to this document, Dr. Davis. I have offered you a two-page mimeographed stapled sheet, two sheets, eight and a half by eleven, that are mimeographed and stapled together. Is this the document you allege Ken Jones placed in your hands, or a copy or facsimile?

A. If that's the one dealing with boycotting registration, that's the only one.

Q. I'll have to ask you.

A. This is it.

Q. This is it?

THE COURT: This is Exhibit 6 again?

MR. CRESWELL: Yes, sir.

[fol. 249] BY MR. CRESWELL:

Q. He did hand you a two-page—

A. Yes, Jones did.

Q. Two-pages stapled together?

A. I don't know if it was in that form or not. This has been rewritten, but it's the content, the contents of this and the one that he reached me were the same.

Q. All right, thank you, Dr. Davis.

Let me move on to a point in—one other question relative to disciplinary policy.

Does the school have a discipilinary policy towards civil rights students, civil rights organizations, towards the Student Non-Violent Coordinating Committee?

A. No.

Q. How about towards the NAACP?

A. No.

Q. Is there a chapter of the Student Non-Violent Coordinating Committee on campus?

A. No.

Q. How about the NAACP?

A. Yes.

Q. There is?

A. They are approved; I don't know if they are active.

Q. You don't know?

[fol. 250] A. Whether it's active but they may have one any day then want to.

Q. Is there a policy towards black power organizations?

A. No, no policy. Now let's go back to SNCC. When the student council turned them down, they had no constitutional, national constitution to abide by, and our handbook say you have got to have the national constitution, must be in conformity with the aims and purposes of the university, and when they were unable to show a national constitution, I'm not talking about SNCC, now. Then they were denied by the student council as an organization, and then when they went over to this other organization, Student Representative organization, then they used up the authority of the student council. They wrote their objectives, they wrote as their objectives the same as those of the student council, which would put up in conflict with the

Southern Association. We couldn't do it if we wanted to do it.

Q. Again back to my original question, what about a policy in respect to black power?

A. No.

Q. And how about a policy—

A. We might differ from the philosophy individually, but so far as having any rules and regulations against them, we have none.

[fol. 251] Q. All right, how about your policy governing discipline for off-campus behavior? Do you feel that the university has jurisdiction to govern off-campus behavior of students?

A. Yes, whenever it reflects on the university.

Q. Is this only when it reflects on the university?

A. Or as involved in the whole area of misconduct.

Q. Fine.

A. If it is misconduct, we hold him for it wherever he is, as long as he is a student.

Q. Now I hand you—

A. Even a suspended student, we still hold him for his misconduct; if it gets too bad, then he would be expelled.

Q. Does that mean a student who is not currently enrolled, but temporarily suspended, then he gained readmission by—

A. One of the big factors is his conduct while on suspension. If that gets bad, too bad, then of course he would be expelled, and take legal actions against him.

Q. Does age make a difference in these determinations?

A. No, I don't think so.

Q. No matter how old the student is?

A. No, if he's a student, he must abide by all of the rules and regulations.

[fol. 252] Q. Now I offered you Exhibit 6, which was the literature that you said Ken Jones handed to you or reached out to you. I now want to offer to you for your inspection, Dr. Davis, Exhibit 4, which is a number of pieces of literature which Mickey Booth handed out on campus, and ask you, sir, first of all, have you seen them before, any of them?

I'll give you just a few minutes to look at them.

A. I answer you by saying this. We submitted all the materials we had to our counsel, and they have presented

what they thought was an encroachment—involved an encroachment upon the academic freedom of the students and faculty out there, and we have no others to present. I don't have—I can't read all of this—

Q. No, I submit that these documents were submitted not by the university—

A. We are only submitting what our representatives from the Attorney General's office put in—

Q. To your knowledge were those documents submitted by the university?

A. Sir?

Q. To your knowledge, were those documents submitted by the university?

A. These right here?

Q. Yes, sir.

[fol. 253] A. I can't go through all of those, but we'll stand on the ones our counsel submitted. We are making no further charges; we are making no charges.

Q. Yes, sir, but the charge against Mr. Booth was that he distributed inflammatory and disruptive literature an I wonder if you could point to any language in that literature that he passed out that was disruptive and inflammatory, and those are copies.

A. I don't know, my counsel have to take that up, I couldn't.

* * * *

[fol. 254] Q. I want to move, call your attention, Dr. Davis, if I could, you mentioned, you gave some testimony about the Student Non-Violent Coordinating Committee, and the SRA. Was there any connection between these two groups?

A. Yes.

Q. What was that connection?

A. Same purpose; they were using up the purposes of the student council.

Q. And there was—

A. They—the whole thing, they argued that the student council was not representative of the student body, [fol. 255] and therefore they were going to do that, which if we had permitted, would have put us in violation of the Southern Association standards, and we would have been

dropped, put on—they frown at us, because you know, surely you must know that we are committed to maintain certain standards with the Southern Association.

Q. I'm sure that's true.

A. And one is the student handbook, and here comes something that would make us violate the student handbook, and you talk about encroachment, that's destruction.

Q. Could you tell me how the Student Representative or the Student Non-Violent Coordinating Committee would cause you to violate the handbook?

A. We have said that the student council was the voice of the students, and here came along an organization that proposed to become the voice of the students. We couldn't permit that, and then we would be violating the Southern Association, we would be put on probation, and of course, we would violate our responsibility to the State Board of Education, at that time fifty-six hundred students out there, and their parents, spent thousands of dollars to go to school there, and we perhaps would have been dropped, put on probation, and it would cause our students to not be admitted to graduate instruction and professional schools over the country. It's a very serious indictment.

[fol. 256] Q. Yes, sir. Did either the SRA, to your knowledge, or the Student—S-N-C-C—SNCC to your knowledge, in their constitutions or statements or purposes ask you to disband the student council?

A. Now let me go back to SNCC. We turned SNCC—the students themselves turned SNCC down, because they did not have a national constitution.

Q. Yes, sir; did they ask the student council be disbanded?

A. They didn't ask anything else, they weren't concerned about that. They didn't have a national constitution.

Q. Did the SRA ask that the student council be disbanded or their power taken away?

A. If I went in your home to eat your breakfast, I wouldn't have to abandon you, just push you over and eat your breakfast. In effect, I've gotten rid of you.

Q. Does that mean that they did or did not ask that the student council be disbanded. Answer me yes or no.

A. Philosophically, they did, yes.

Q. How so, sir?

A. When they gave as their purpose, when they used up the purpose of the student council as their purposes, then in effect, that would destroy the student government. You couldn't have two organizations out there doing the same thing.

* * * *

[fol. 261] Q. I'm asking you, sir, if you were aware of a meeting of the Faculty Advisory Committee in late May or June of this year, that meeting would have been sometime towards the end of the academic year that just finished at your university.

A. In some ways, yes, in this regard.

Q. Yes, sir. Can you tell me—

A. And I at that time, all of these cases that we have had, been trying to rehabilitate across the year, normally go to the Student Advisory Committee, at which time there's no hearing or anything else, and we take a hard look at them, and those that we feel are not likely—I say this is a matter of routine, in that we do it every year—I'd like for that "in that we do it every year" to be recorded— and of course to that extent I would naturally [fol. 262] know every summer, the beginning of every summer, at the close of every school year, this committee brings before it a large number of students that some will receive severe discipline, some minor discipline, some released, and some put on—

* * * *

Q. Excuse me, Dr. Davis. I asked you if you knew of the date, and I gather you don't know of the date?

[fol. 263] A. The date is not important.

Q. Do you recall if there was one meeting?

A. I'm not—

Q. May I finish my question, sir, please? Do you recall if there was one meeting or a series of meetings?

A. No.

Q. You don't recall. Were the students—I'm trying to focus on some meeting where disciplinary action was taken—were students called before the committee prior to the disciplinary action being taken in May or June?

A. I suggest you direct that to the committee.

Q. The question will be directed to them; I'm asking you about your understanding of it now. Do you know or don't you know, yes or no?

A. I refer you to them.

Q. Did you attend any meetings of the Faculty Advisory Committee?

A. No.

Q. Did you make any presentations to them of testimony?

A. That is prior to—

Q. Yes, sir, I'm still referring. I'm drawing your attention to either late May or early June?

A. No.

Q. That's what I'm asking you about, did you attend [fol. 264] any meetings?

A. No.

Q. You did not?

A. No.

Q. Did you offer testimony to the Faculty Advisory Committee to be used in any of those meetings either oral testimony or written testimony?

A. No, because everything I knew they knew it.

Q. Everything you knew, they knew it?

A. Yes, the two encounters I had with Mr. Brooks. The first one Dean Payne was there, and the second one Dr. Sawyer was there. They knew that. If they had not been there I would have submitted it, but their being there, there was no point in my submitting it.

Q. So prior to the June meetings, you say there was some prior knowledge on the part of at least these two members of the committee of the things you were later to complain of, is that correct?

A. That I later complained of in your presence.

* * * * *

[fol. 267] Q. Dr. Davis, prior to the annual meeting of the Faculty Advisory Committee, did you have any conversations with other members, with members of that committee, about Mr. Jones, Mr. Booth, Mr. Brooks?

A. Many times.

Q. Yes, sir. Did you express any opinions to those people you had conversations with them?

A. We discussed mostly what they had done.
Q. Did you express an opinion to those—
A. Yes, do all we could to rehabilitate them.
Q. What was the opinion?
A. Do all that we could to rehabilitate them.
Q. What was the opinion that you expressed, sir?
A. That we would do—here are some problem children we're having, we would do all we could, in that gross disrespect for authority, breaking up a meeting where we [fol. 268] were trying to solve problems, claiming that they were interested in solving problems, we had spent a full day solving problems, and when Mr. Brooks saw that we were getting somewhere solving the problems, he interrupted, inflammatory, knocking the school out, and so much so that the other students stood up, turned around trying to quiet him down. They couldn't quiet him down at all. It was obvious then that they deal with a tough character, just whether he could be rehabilitated—
Q. Did you express that opinion other than to Dr. Sawyer who was there?
A. That's the only one I was talking to, Dr. Sawyer.
Q. Did you talk to any other members of this committee?
A. I talked to the dean of students all the time, Dr. Payne.
Q. Did you talk to any other of these, you had numerous conversations with these—
A. With those two.
Q. Were any rehabilitative steps taken?
A. Yes, the whole school program is set upon the basis of that. Every day we try to advise the students to let
Q. I'm speaking particularly of these three individuals.
[fol. 269] A. These and all the rest of them.
Q. Yes, sir, what—
A. Advised every day to let us use this school for what is intended, to educate children, let's create an academic atmosphere that would be conducive to studying and let us not make this a battle ground, as Mr. Brooks said, to Dr. Sawyer, whoever heard of respect in a revolution.

* * * *

[fol. 277] Q. One question concerning the handbook, Dr. Davis, the student handbook, can you tell me when was the last time this was revised?

[fol. 278] A. It is under revision now.

Q. When was the last time it was submitted to the Attorney General's office, for instance, for legal sufficiency?

A. When was the last time—

Q. When if ever was the last time the handbook was submitted to the States Attorney General's office for review of legal sufficiency?

A. Only when we knew we were going to have these hearings with legal counsel.

Q. Yes, sir.

* * * * *

[fol. 279] Q. Do you know of any rehabilitative steps that were taken by the university?

A. We are in constant—that is the whole school is based on that.

Q. Can you be specific about what steps were taken?

A. Yes.

Q. With reference to—

A. From writing the catalog, exposing them to the catalog, they are intelligent people, they read well, and interpret well, the handbook is written for their consumption, and the entire classroom procedures are given to that, house meetings, and—you are into the heart of the school program, that's all ninety per cent of what the school is all about. You couldn't hardly instruct a fellow without guiding him.

Q. Yes, sir, but—

A. So you are going—but just for me to go—I could write an encyclopedia to all of the buildings to give you ever detail, the whole system.

Q. I'm only asking you about what you know, to your knowledge.

A. I'm telling you what I know.

Q. To your knowledge, was there ever any communication with any of the e three individual with any arm of the [fol. 280] univer ity that they needed any rehabilitation or asking them to come in for rehabilitation or instructing

them that if they did not, they would be subject to discipline?

A. We start out with all of that.

Q. Yes, sir, I know—

A. But we offer that as a step and require our students and understand it, we don't lead him around like a baby and tell him everything.

Q. Yes, sir, but—

A. A lot of these things he's supposed to know, and we've got the catalogs, the handbooks, and the history of the university, and we have a very elaborate setup for this. They know, they understand when they have gone beyond the academic freedom and rights of others. They understand that. They understand that quite well. They are advised from the time we send them to the catalog until they graduate. In fact, the induction ceremonies of the freshman class every fall, these kind of things are gone into, so you are just talking about really the backbone of our university or any other university, that would be true in any university.

Q. So your testimony is that you rely upon their interpretation of the handbook?

A. Oh, no, I say that's one thing.

Q. What specifically was done by the university?

A. Everything we do.

[fol. 281] Q. What specifically was done to your knowledge to rehabilitate Fred Brooks, Mickey Booth and Ken Jones?

A. We conduct the school for nine months and carry on all of the instructional activities of the university.

Q. Yes, sir. Were there any specific—

A. I wouldn't even try to, it would take an encyclopedia.

Q. Was there any specific—

A. You just confuse mass—

Q. Was there any act directed by any arm of the university toward one of these men? I'm not talking about general things, but these three, did you take any—

A. Did I?

Q. You or anyone to your knowledge take any partic-

ular acts to rehabilitate Fred Brooks, Mickey Booth and Ken Jones?

A. I could not point out any.

* * * *

[fol. 283] MARJORIE SMITH

a witness called to testify by and in behalf of the plaintiffs, after having first been duly sworn, was examined, and testified as follows:

DIRECT EXAMINATION

BY MR. BOULT:

* * * *

Q. What is your occupation?

A. I'm an instructor in the history and political science department at Tennessee State University.

Q. Mrs. Smith, what is your academic background, very briefly?

A. I graduated from Vassar College in Poughkeepsie, New York, in 1960, and received my master's in the field of political science from Johns-Hopkins in Baltimore in June of 1962.

Q. And what has your contact with the academic world been since 1962 up until the present?

A. Well, my position at A&I was my first teaching position. I worked ever since graduation from—well, I've worked every since 1961 at various positions in New York City and New Jersey. One was with the political science research organization and several publishing companies.

Q. So you have been in the—might be characterized [fol. 284] as being in the academic field all of this time, is that correct?

A. Yes, sir.

Q. Do you know any of the plaintiffs to this action?

A. I have just—

Q. Mr. Jones, Mr. Brooks or Mr. Booth?

A. I knew Mr. Booth. I've had none of these students in class, and I first met Mr. Brooks and Mr. Jones the

other day. But I did—I have talked with Mr. Booth on several occasions.

* * * * *

Q. Mrs. Smith, did you attend a meeting on April 28th at the University?

A. Yes, I did.

[fol. 285] Q. What was that meeting?

A. It was a nominating meeting to nominate candidates for president and vice-president of the student council and also for Miss Tennessee State. People made nominating speeches and then the candidates made acceptance speeches.

Q. Is that the same meeting Dr. Davis was talking about?

A. I believe it is, on April 28th.

* * * *

[fol. 286] Q. What was the general tone of the speeches [fol. 287] of both of these students and the others, general tone of the meeting?

A. The general tone of the mteting was very disturbing to me. It was a very—well, each speaker seemed to be outdoing the other speaker in vindictiveness. There was a lot of emotionalism connected with the majority of these speeches. I recall that Mr. Douglas' speech seemed somewhat more moderate and more restrained than many of the others, but the general tone was a disturbing one, because it was a fairly emotional one, and I was disturbed that I had to dismiss my classes for the afternoon in order to sit through it.

* * * *

[fol. 289] Q. How did these members of the administration, including Dr. Davis, react, when they were pointed to?

A. Well, it seemed to me that they weren't concerned about it and in fact, that they were smiling.

* * * *

[fol. 290] Q. What was the atmosphere on the campus regarding academic freedom? You've been to several other campuses, compare it.

A. I'll compare it with other campuses that I've been involved in. I'll say it's a definite—

MR. ROBERTS: I fail to see the relevancy of this. She testified that this is the first teaching position she's held.

MR. BOULT: She's been on other campuses.

MR. ROBERTS: She might have been on campuses in another capacity.

THE COURT: For what it's worth, I'll let her answer.

BY MR. BOULT:

Q. Go ahead.

A. Would you repeat the question?

Q. Generally the atmosphere on Tennessee State University campus in regard to academic freedom.

[fol. 291] A. I think you could make a definite comparison in that Tennessee State University would not compare favorably in the part of academic freedom.

THE COURT: Are you speaking of freedom on the part of the students or the faculty or both?

THE WITNESS: Both.

BY MR. BOULT:

Q. Are there any particular instructions either formally or informally given to stifle the freedoms?

A. Well, I guess I have never received any formal instruction about what I was supposed to do. I have received informal advice, I suppose, about how you should operate.

Q. Have you been warned against any particular groups on campus?

A. No, personally I have not.

Q. Have you been warned against associating yourself with any particular types or campus without—

A. No, personally I have not.

Q. Have you been warned against associating yourself with any particular philosophy on campus?

A. I don't think so. I guess I have been cautioned in a faculty meeting that I didn't—that faculty did not need to have their classes disrupted by students, that a

teacher didn't have to feel that he or she had to put up with any disruption of classes.

[fol. 292] THE COURT: On that point, do you regard that as an interference with academic freedom?.

THE WITNESS: As it was specifically stated, no.

THE COURT: You would not?

THE WITNESS: Not in those specific terms, no, and it was specifically prepared.

BY MR. BOULT:

Q. You would not?

A. No.

Q. Have you been advised by your speriors on the subject of black power?

A. Well, I've been advised in general and informal terms, I guess. For instance, the general atmosphere is that Afros are frowned upon by the administration.

Q. What do you mean "Afros"?

A. Pardon?

Q. Is that a certain method of wearing their hair?

A. Yes, that's right, and been advised that the faculty members should take it upon themselves to educate the student body in the area of personal grooming, cleanliness and so forth. That I consider something of a breach of academic freedom. Personally I don't consider it the responsibility of the teacher to engage in this.

Q. You mean a university teacher?

[fol. 293] A. Yes.

Q. You wouldn't object to it in grammar school?

A. No, but not on the university level.

* * * *

[fol. 296] OLLIS DOUGLAS, JR.

a witness called to testify by and in behalf of the plaintiffs, after having first been duly sworn, was examined, and testified as follows:

DIRECT EXAMINATION

BY MR. CRESWELL:

Q. Mr. Douglas, are you a student at Tennessee State A&I University?

[fol. 297] A. Yes, I'm a senior in political science major.

Q. How long have you been in attendance there?

A. This is my fourth year.

* * * * *

[fol. 301] Q. Can you characterize the atmosphere or the kinds of speeches that are generally accepted on the university campus during the times when students are running for office if there is anything generally in common with most of them since you have been on the election commission for two years?

A. Well, the speeches have always been very emotional, designed to appeal to the emotions of the students, and there has been a lot of mud slinging, a lot of vocal attacks on the administration. This is one of the best ways to gain support for your cause is to attack the administration.

Q. Is this a general—would you say this is a general statement about elections at A&I?

A. Yes, sir, everybody criticizes the administration at election time whether they agree with it or not. This is a way of obtaining support.

* * * * *

[fol. 305] MRS. C. E. McGRUDER

a witness called to testify by and in behalf of the plaintiffs, after having first been duly sworn, was examined, and testified as follows:

DIRECT EXAMINATION

BY MR. CRESWELL:

Q. What is your occupation, Mrs. McGruder?

A. I am Mrs. C. E. McGruder, NAACP Youth and College Director. I am a housewife.

Q. Are you connected with the Nashville chapter of the NAACP?

A. In the national youth department and the Nashville branch.

Q. Have you held an office?

A. Yes, I have. I am past president of the Nashville branch and presently vice-president of the State of Tennessee, and presently youth director, which is national also.

Q. Do you have any local responsibilities?

A. Yes, I do.

Q. What are they?

A. I am youth advisor for the youth council which is high school and youth coordinator for the college division.

Q. Does the NAACP either the national organization or the local branch have a chapter on the Tennessee State [fol. 306] A&I University?

A. At the present time, I do not.

Q. When was the last time?

A. We were chartered on A&I State University in 1965, with my interest and interest of students. Before that time, there had never been a civil rights organization on the campus, because of apathy and fear of student participation.

Q. Mrs. McGruder, is it part of your function to organize college chapters in Nashville?

A. Yes.

Q. Did you try to?

A. Yes, I did. A&I State University is one of the worst schools I've ever dealt with in organizing the campus.

Q. Tell us the problems you had.

A. Going through the procedure was the difficult problem, with the president, and had to go through the dean, and we finally went through the procedure, and we finally got approvement in it, but we did not get a room for meeting.

[fol. 307] Q. Do you remember—

A. Also the students were afraid. They were afraid to participate because they would get thrown out of school. That is what the students has been saying to me ever since I've been working in civil rights.

Q. Mrs. McGruder, when you had the chapter or when you received, back in '65, some recognition, did you attempt to hold meetings on the campus?

A. Well, we—well, yes, we had meetings when we were chartered, but we had them upstairs in the student lounge. Officially we didn't have a room, but we had meetings anyway. We were chartered, we had the privilege of having meetings there, but we didn't have a room.

Q. Did the students pick a faculty advisor?

A. Yes, they had a faculty advisor.

Q. How was that advisor chosen, and the president chosen?

A. They asked the instructors, a lot of instructors would not be their advisor, because of many reasons, they were afraid they would be fired.

Q. Why is there not an active chapter today?

A. There's not a NAACP because to my knowledge, we applied and the student council was supposed to give us approval, officially now, I don't know, with this problem, trying to get a civil right organization on the [fol. 308] campus, we are, NAACP at the present time is intercollegiate has proved this a fact, because we have problems, working on the campus with apathy people.

* * * *

DONALD DE COURSEY SAVOY

a witness called to testify by and in behalf of the plaintiffs, after having first been duly sworn, was examined, and testified as follows:

DIRECT EXAMINATION

BY MR. BOULT:

Q. Is it Dr. or Mr. Savoy?

A. It's Mr. Savoy. I am a professor of physics at Tennessee State A&I University.

Q. How long have you been there?
A. This is the beginning of my sixth year.

* * * *

[fol. 309] Q. Dr. Savoy, during the academic year, 1966-'67, did you have occasion to be active with student organizations?

A. Yes, I was asked to be advisor for the Students Representative Association, which was just being formed at that time.

Q. What was the purposes of this association, briefly?

A. Well, briefly, every year during the winter quarter, the independent students form an organization in order to run candidates for the election in the spring. This year they were forming an organization which they hoped would be a full year organization and not only have candidates for the elections, but would encompass the entire campus and deal with the grievances of the students and bring these directly to the faculty and the administration by means of having open meetings and communication links.

Q. Was there any difficulty in getting this organization approved by the university?

A. It seems that the organization was never actually approved, although we were not notified formally with the exception that after the organization and the constitution had been approved by the student council, I was told by the president of the organization, not directly, [fol. 310] that the dean of students was holding up the constitution, because he did not approve of the constitution.

* * * *

Q. Mr. Savoy, excuse me, what was your reaction to this information that came to you that there was some difficulty with the dean's office.

A. Well, the changing of the name of the organization didn't seem to make sense, and after a meeting, I had an opportunity to speak with some of the organization members to Dean Payne, and at this—a little in- [fol. 311] formal meeting—the dean said that he would send the constitution to—he mentioned Dr. Boswell, the following morning.

Q Who is Dr. Boswell?

A Dr. Boswell is vice-president emeritus. I believe he was part of the executive committee. I don't know why he mentioned Dr. Boswell specifically other than that, that he was on the executive committee.

Q I'm going to read a short passage starting on page 63 of the student handbook of the university for the academic year 1961-62, setting for the qualifications for a student organization's recognition. I would like for you to listen to these and see if this organization you were advising complied with them.

"Recognition will be given by the university provided that:

"1. The policies and objectives of the proposed organization are consistent with the policies and objectives of the university."

A Yes.

Q Did your organization comply?

A Yes.

Q "2. The proposed organization represents the interests of students and is directed by them."

A Yes.

Q "The group has a minimum of fifteen students unless a smaller number is consistent with the group's objectives."

A Yes.

Q Did it have over fifteen students?

A Yes.

Q "Any proposed organization with which it may be affiliated by name or otherwise does not engage in any subversive activities against the state or the United States."

A Yes.

Q "The faculty member has agreed to act as adv-

A Yes.

Q "(8) The group agrees to use the services of the auditing committee of the student organizations."

A I am not familiar with the auditing committee.

[fol 413] Q Was any objection made to the organization on that ground?

A Not to my knowledge.

Q Did the dean of students approve the organization?

A I was told two weeks after the statement that it was going to be sent to Dr. Boswell the next morning, it was never sent.

Q Dr. Boswell was not the dean of students?

A No, Dean Payne was saying that the constitution was never turned over.

MR. BOULT: For the record, at this point, I'll read again from page 63 of the student handbook.

"The student council will recommend the granting of or denial of the request to the dean of students who will act on the recommendation and inform the president of the proposed organization of the final decision."

THE COURT: What is the name of this group?

THE WITNESS: The Student Representative Association.

[fol 339] DR. ALGER VERNON BOSWELL

a witness called to testify by and in behalf of the plaintiffs, after having first been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. HILLMAN:

Q Dr. Boswell, for the record, where are you employed?

A Tennessee State A&I University.

Q What position do you hold at Tennessee A&I?

A Vice president emeritus.

Q And what functions do you have as vice-president emeritus?

A I teach mathematics, and I -- you mean the number of committees I'm on, or --

Q Yes, sir.

A That's a little hard to explain. Well, I'm on the administrative committee, I'm chairman of the athletic council, I'm chairman of the faculty advisory committee [fol. 331] I guess that's enough, is it, or do you want me to --

THE COURT: I think that's enough.

BY MR BELLMAN:

Q How long have you been chairman of the Faculty Advisory Committee?

A Oh, I imagine I've been chairman for twenty years.

Q Twenty years?

A Or more.

Q Where did you receive your education?

A Wylie College, Marshall College, A.B. degree, Northwestern University, master of arts degree, Columbia University, professional diploma. I believe those are the degrees.

Q What is the Faculty Advisory Committee?

A It's really what is often called a discipline committee.

Q Its chief function is to act as a disciplinary body?

A Disciplinary body, yes. We have used the advisory, because we have done -- tried to do some advising during our deliberations.

[fol. 332] Q Were you appointed chairman by the president?

A No, I'm trying to think whether it was this one or the other one. It's been a long time, but this one I think has appointed me to be chairman.

Q The hearings that were held in the matters of Fred Brooks, Mickey Heath, Kenneth Jones, were under the acting chairmanship of Dr. Payne?

A Hearing officer, yes.

Q Did you appoint Dr. Payne to act as chairman?

A No, it was a decision of whether I would or not, and I, because of several problems, I wasn't, and being out of town, then it was decided -- I decided that I would not, then in conference with the president and him, he agreed to -- he would be the hearing officer.

Q You attended the hearings, is that correct?

A Oh, yes.

Oh, yes, you mean these latter hearings?

Q Right.

A Yes.

[illegible] Q Did Dr. Davis sit in on these hearings?

A Only when called as a witness, I believe, I'm sure that's true.

Q In June, 1967, plaintiffs in this action received -- excuse me, June, 1967, certain letters were prepared by the university to be sent to certain students, one to the plaintiffs in this action. I would like for you to look at these.

MR. BELLMAN: Your Honor, these are the letters attached to the complaint.

BY MR. BELLMAN:

Q These are copies of letters. Do they have your signature on them?

A They have my signature that is signed by the secretary of the -- you notice the "by" there, the secretary of the Faculty Advisory Committee.

Q You did not sign these letters?

A No, not personally.

THE COURT: What date is that letter?

MR. BELLMAN: June 21st on all these letters on Plaintiff's Exhibit -- now I don't know the numbers on these letters that appear in the complaint.

THE COURT: All right.

THE WITNESS: May I make a brief explanation?

THE COURT: All right.

[illegible] THE WITNESS: It was the [illegible] to the city, but she does in these letters have the authorization to sign my signature with her name there as secretary of the Advisory Committee.

BY MR. BELLMAN:

Q. Will you—

A. But I didn't personally sign it.

Q. Did you dictate these letters?

A. No, I personally, that's growing out of the Faculty Advisory Committee, I imagine, in which I personally was not in the city.

Q. Had you ever been apprised of the charges against these three gentlemen?

A. You mean before—

Q. Before these letters were written?

A. No, sir. Now I was apprised.

Q. Let's understand your testimony—

A. When I came back to the city, I was out of the city from the latter part of May until July—

Q. As I understand your testimony then, these three letters were prepared by persons other than yourself?

A. Faculty Advisory Committee.

Q. On the committee, and that the your signature which appears on these letters was put there by your secretary, you had no knowledge, specifically, about these [illegible] letters other than to—

A. Until I returned to the city, but she was authorized to sign my name to it.

Q. On any document?

A. That was pertaining to the Faculty Advisory Committee, yes, as secretary of that committee.

Q. The notice says that after careful consideration of your record as it appears below, the committee voted unanimously to deny you the privilege to continuing your education at the University for an indefinite period.

The term "unanimously" refers to what? This was a vote?

A. No, I was not for that particular—if you can refer to a similar one in past years, I could answer. This particular one, I was not present at the time the committee met.

Q. Who was? Who on the committee was present and would be able—

A. Dean Payne, and Dr. Sawyer, I believe, was—might have chaired them at different times, but whichever one, it would have been the same.

Q. The committee, as far as you know, did meet prior to the instruction to prepare these letters, is that correct?

A. (No answer.)

[fol. 337] Q. The Faculty Advisory Committee did meet prior to the instructions to the secretary to prepare—

A. I'm sure that they may have been even signed during the meeting. I couldn't say exactly how it was done this time.

Q. But you don't have personal knowledge of whether a meeting was held?

A. I wasn't there, no.

Q. You did not initiate charges against these fellows, the plaintiffs in this action?

A. You would have to explain that. What do you mean by initiating charges? I don't think I've ever initiated—if I understand what you mean, I think—I've never personally initiated a charge against them.

Q. Do you have any idea how many letters similar to this one or these letters were prepared by the committee and sent to students?

A. Oh, approximately seventy, that's the word I've heard.

Q. Did you have any involvement in the preparation of those letters?

A. I thought this was the same letter. Now if you are talking about letters since that time—

Q. No, I'm referring—

A. I thought you was talking about this same pe-

[fol. 338] riod.

Q. Right.

A. I had no more to do with any others.

Q. Does it require—is unanimous action of the committee required to discipline a student?

A. I am—when you say "required", that bothers me, but I will tell you this, that I believe—now, I told you I had been appointed by Dr. Davis twenty years—I've been on the Faculty Advisory Committee for years; since

'87, '38, and I don't know of but one instance in that history that there wasn't a unanimous decision, and there was one person who in that time, after we had gone back about three days trying to—he finally decided he wasn't going to change, so that's the only time we had to make a minority report in the history.

Q. This is a form letter, is it not?

THE COURT: What is that?

MR. BELLMAN: I'm referring to the letter of June 21st. It's a form letter on which certain charges were typed.

THE WITNESS: I imagine so. She could tell you more about that.

BY MR. BELLMAN:

* * * *

[fol. 3499] Q. You do not know if this is a form letter?

A. I know that—I don't know whether you mean the whole letter is form—

Q. No, I mean—it looks to me in reviewing other letters that counsel for the defendants have presented to me—

A. Looks like this.

Q. The first and the last paragraphs are form.

A. That's the way it looks to me, yes.

Q. You did not authorize the preparation of this form?

A. No.

* * * *

[fol. 3511] Q. I show you an original, maybe this will help. I would like to get this on the record. Is this the first and third paragraphs are mimeographed, is that correct?

A. I'll have to ask you to check with Mr.—I'd have to find out. I'm really not positive. I just hadn't thought that question would be asked. I could find out.

MR. BELLMAN: Would counsel agree that the first and third paragraphs are mimeographed?

MR. FOX: That's the usual form, been used for years. The center states the particular offenses with respect to the addressee.

MR. BELLMAN: It's the usual form except it has to be retyped each year to bring a date—

MR. FOX: That's right, that's the general form.

THE COURT: All right, that will be made a stipulation in the record then.

BY MR. BELLMAN:

[fol. 342] Q. Dr. Boswell, the letter says that the persons involved were denied the privilege of continuing your education at this university for an indefinite period. How do you characterize that disciplinary action?

A. For an indefinite period.

Q. The letters reads specifically, after careful consideration of your record as it appears below, the committee voted unanimously to deny you the privilege of continuing your education at this university for an indefinite period.

THE WITNESS: My understanding is an indefinite period means that the student cannot re-enter school. I'm just taking the statement you made.

BY MR. BELLMAN:

Q. It's the committee.

A. When we say that he cannot come back to the school for an indefinite period, now—

[fol. 343] Q. Did you—

MR. FOX: Let him answer.

BY MR. BELLMAN:

Q. All right, excuse me.

A. The way I take it, a person may come back at different periods. It is indefinite, depending on what the committee, I think, has usually done is to take into consideration the general conduct and the general atmosphere on the campus as to when they would allow them to return to the campus.

Q. This constitutes a disciplinary suspension, is that correct?

A. Yeah, until they do right there, yes.

Q. Do you have any idea why no decision was made [fol. 351] prior to September the 8th to reconsider these cases?

MR. FOX: If the Court please, I want to object to that. I don't know why that's material. He said he reconsidered.

THE COURT: Why is that material? They did provide him with an opportunity to have a lawyer present.

MR. BELLMAN: The plaintiffs in this action did suffer severe harm in the summer in that they were denied access to the university.

THE COURT: That's a different issue. Now you are getting on the question of when they decided to let them have a lawyer.

MR. BELLMAN: Certain disciplinary action was taken against these students in June.

THE COURT: That's right, but that's a different issue from the question of the lawyer.

MR. BELLMAN: But the hearing stated—the letter stated that hearings would be available to these students based on their original action, and throughout this period, efforts were made by an attorney to avail the plaintiffs of that advantage stated and continually there was denied to the plaintiffs, and now I understand the testimony of Dr. Boswell is that the reason, the reason that [fol. 352] these requests were turned down is that a lawyer was involved in the process, is that correct?

THE COURT: I don't—

THE WITNESS: I don't see that I can answer that question.

THE COURT: I don't see anything in the correspondence—go ahead.

THE WITNESS: The way you put it, I don't see any answer to your question at all.

THE COURT: Now according to the correspondence, and this is something I would like to have clarified, in the letter of June 22nd, 1967, Mr. Creswell addressed a letter to Dr. Payne, and to the Faculty Advisory Committee, stating that he represented all three of these defendants.

MR. CRESWELL: That's correct, Your Honor.

THE COURT: You had prior authority to represent [fol. 353] them, these individuals?

MR. CRESWELL: Oh, yes.

THE COURT: You had prior authority.

MR. CRESWELL: I don't remember the date, but they signed authorization forms.

THE COURT: You request that you be furnished with a copy of a handbook, you say that the action was taken in a highly summary fashion without any formal notification, that the disciplinary action would be taken. [fol. 354] MR. CRESWELL: That was my understanding from talking to the plaintiffs.

THE COURT: Yes, I understand, and without notification of the cause of the disciplinary action.

MR. CRESWELL: That's because at that time I was —I hadn't received the 21st letters, and was working on the telegrams.

THE COURT: I don't question that point, but the point I'm making about this is I don't see anywhere where you raise the question about having authority to represent these students. You just say you did. You don't request permission.

MR. CRESWELL: No, I was not requesting permission. As I would see this, the right to represent them is a matter between the plaintiffs and me.

THE COURT: That's the point I'm making, you assumed that you did have the authority and went ahead.

MR. CRESWELL: Right, and the right to represent them at the committee.

THE COURT: Right, and then on July 31st, 1967, you addressed a letter to Dr. Boswell again stating that you represented these individuals, and you state that it was your understanding that they would be given a hearing.

MR. CRESWELL: Yes, sir.

[fol. 355] THE COURT: And you suggest certain dates between Friday, August the 8th and August the 11th?

MR. CRESWELL: Yes, sir.

THE COURT: Then you ask for more detailed information so that you would be in—

MR. CRESWELL: It's reiteration in a little more detail.

Now the correspondence does not show the conversation that I had with Dr. Boswell in a telephone conversation that I was told I could not represent them and could not be present in the hearing.

THE COURT: That was after this letter?

MR. CRESWELL: Yes.

* * * *

[fol. 356] THE COURT: September the 8th, 1967, says that hearings will be held at which you may appear as their legal counsel, hearing may be held eight a.m. to four p.m., daily during the period Saturday, September 9th through Thursday, September 14th, room 207, Administration Building. Advise dates and hours which you select for these hearings. Letter follows.

And then there is a letter of September 8th, 1967, from the Advisory Committee to Jones. I don't know whether there is a similar letter to the others or not.

MR. CRESWELL: Those are copies that were sent to me, Your Honor.

THE COURT: All right. Stating that the committee had set aside eight a.m. to four p.m., Saturday, September 9th through Thursday September the 14th as the time for the hearing, and also stating that you would be permitted to represent the students. Then there was a letter directed to you September the 8th, 1967.

MR. CRESWELL: Yes, sir.

THE COURT: To the same effect as the one I just [fol. 357] read.

MR. CRESWELL: That's correct.

THE COURT: Now somehow or some way, the hearing dates were changed, were altered, were not actually held on these dates.

MR. CRESWELL: Because I restated the request for a more specific set of charges than those contained in the June 21st letter.

THE COURT: Yes.

MR. CRESWELL: And was not agreeable to a hearing until we could get a restatement, and stated that was my advice to them.

* * * *

[fol. 358] THE COURT: What was that date?

MR. CRESWELL: Dr. Boswell—I think this is about the first week of August.

May I say one word?

THE COURT: Let's clarify this first.

MR. CRESWELL: And prior to that, other letters from the administration officials at A&I, and I believe prior to that I had received two letters acknowledging my letter, but never advising me that I would or would not be able to represent them or nothing giving the specifications of charges. In other words, there was no response to the question that I raised as the record would show.

THE COURT: Would it be a fair statement then to say that the committee took the position that the students were not entitled to counsel, and that you were so notified, but that decision was changed sometime on or about September—the first part of September, 1967, and that you were notified of the change of the committee's viewpoint?

MR. CRESWELL: From my own—

THE COURT: On September the 8th, 1967, that you would be entitled to represent them?

MR. CRESWELL: From my own prospective—

THE COURT: Is that a fair statement?

[fol. 359] MR. FOX: Yes, sir, that's my understanding.

THE COURT: Do you agree with that?

MR. CRESWELL: Not completely. They took no position from June until August 4th when I talked to Dr. Boswell. They took no position.

THE COURT: As far as you were notified?

MR. CRESWELL: Yes, sir.

THE COURT: All right. I think I have a clear picture.

THE WITNESS: May I make one statement, Your Honor?

THE COURT: All right.

THE WITNESS: About this first time—this period between right afterwards when he notified Dean Payne that he was representing this student, and about August when he notified me, now that notification was my first notification was even that he wanted to represent—it's just I wasn't there, and personally I wasn't familiar with this.

* * * *

[fol. 361] BY MR. BELLMAN:

Q. Are you familiar with the specification or charges, more definite specification of charges provided to Mr. Creswell and the students dated September the 14th?

A. Yes.

Q. Did you participate in the drafting of these?

A. Yes.

Q. Could you tell the Court why certain new charges were added to the charges dated June 21st?

A. The only problem about new charges bothered me a little in this manner. Now maybe we weren't, in our first letters, all of them are usually general rather than specific, and we get to the specifics within our own hearings. Now that's the way we have done it, that if we were going to—a general disorderly conduct may mean one thing in one instance and something else in another. It's covering disorderly conduct, but when we come up with specifics, that's—

Q. So it's your position that no new charges were added, just a redefinition of prior charges?

MR. FOX: If the Court please, again the record is [fol. 362] there to show.

THE COURT: The record will show.

* * * *

Q. Public drunkenness was charged against Fred Brooks in June and was not reiterated in the September specifications.

A. The only thing I can tell you is that when we were—you must remember when those first statements went out, they were not—again we were meeting, as in our usual and for our usual considerations. Now when we got down to this Court business, and then we reviewed our evidence to try to see which of these things [fol. 363] could definitely be proven, and those are the ones that—and the others within ourselves, if we didn't have the proof—now I may make—

Q. Let me—

THE COURT: I understand he said they were dropped because he didn't think they would have enough evidence to sustain it.

BY MR. BELLMAN:

Q. But they were relied upon to dismiss the students in June, is that correct?

A. I don't know; I wasn't there.

THE COURT: According to the letter, they were, that's right. The letter of June 21st.

• • • •

[fol. 380] THE COURT: All right, let the blue document be passed to the Clerk, and that be given what number?

THE CLERK: Exhibit 37.

THE COURT: Thirty-seven, and that represents a [fol. 381] list of persons who were to be considered.

MR. BELLMAN: To be considered for disciplinary action. As I understand, it was prepared in the Dean of Student's office.

MR. FOX: Yes, sir.

THE COURT: That will be admitted under the stipulation as Exhibit 37.

* * * *

[fol. 382] JOSEPH A. PAYNE, JR.

a witness called to testify by and in behalf of the plaintiffs, after having first been duly sworn, was examined, and testified as follows:

DIRECT EXAMINATION

BY MR. BELLMAN:

* * * *

Q. What position do you hold?

A. I am Dean of Students and professor of education.

Q. Are you a member of the Faculty Advisory Com- [fol. 383] mittee.

A. I am.

* * * *

Q. Dr. Payne, you served as acting chairman for the hearings that were held in relation to the students in this action, hearings held by the Faculty Advisory Committee?

A. I did. That is the formal hearings held with counsel.

* * * *

[fol. 384] Q. How was it determined that charges should be brought against the plaintiffs?

A. What we do at the university and at the end of the school year, or near the end of the school year, we ask the personnel deans, head residents, and others who know students, who work with students directly, to submit the names of students whose conduct has been of such nature that they should be reviewed by the Faculty Advisory Committee with the view to determining future disposition of those students. We further ask them to set forth any acts or any behavior, the date and time of that behavior that we—that the Faculty Advisory Committee may take an in-depth look at the student and his behavior on campus and while he's enrolled as a student there during the year.

Q. Who submitted charges or materials on the plaintiffs in this action?

A. Well, I'm not sure. It could have been the dean of men, it could have been the head resident.

Q. Dr. Payne, how many students received letters notifying them of disciplinary action this last spring?

A. I think there were roughly seventy such letters [fol. 385] sent.

Q. Seventy you say?

A. Roughly seventy. I'm not sure of the exact number.

Q. Okay. That's close enough.

Q. How were these students first notified that action was to be taken against them?

A. What we do is notify students, local students or students who are in the city of Nashville, by letter or by night letter and by telegram where the circumstances would warrant the same.

Q. What—

A. I might add in that regard that in most instances, word gets around, students expect to be notified. We don't operate on this, we send a notice to students that your conduct has been of such nature that we think you should appear before an appropriate body on the campus to show cause for this conduct.

Q. This is a—I'm referring to Exhibit A attached to the complaint. That is a telegram—is this the type of notice you are referring to?

A. Yes, that may be, yes. This is certainly one of the notices sent.

Q. Would you read what the telegram states? This is a telegram directed to Kenneth Jones?

[fol. 386] A. Yes.

> "3816 Dandridge Avenue, Dayton, Ohio. You have not been cleared to enter the university for summer study. Letter will follow. Signed, Faculty Advisory Committee."

Q. Were all seventy students notified in this preliminary manner?

A. I cannot be sure whether all seventy of them were. My guess is that they all were, that is a telegram was sent. Now some of these telegrams were returned.

* * * *

Q. Now the telegram in Kenneth Jones' matter is dated June 8th. Did the committee meet prior to the issuance of this telegram?

A. Oh, yes, otherwise telegrams wouldn't have been sent.

Q. Does the committee have to meet in a formal manner to consider whether telgerams should be sent?

A. Oh, yes.

Q. Do you recall when the committee met to consider whether telegrams should be sent?

A. I can't recall the exact date, but I could say that it met prior to the date of the telegram.

Q. Would you tell the Court—do you have an idea [fol. 387] what month this was?

A. Well, it would either be the latter part of May or the first of June. I can't tell exactly. It's either the latter part of May or the first of June, but prior to the date on the telegram.

Q. Now there were seventy students, you testified that were to be considered for disciplinary action.

A. Let me clarify that point here. There were seventy students involved, but of these seventy students, many of them had been before appropriate disciplinary committee prior to the summer.

It is indeed unfortunate that the number seventy got involved here, because some of these students had been before the senates, had gotten six demerits from the senates, had been turned over to the Faculty Advisory Committee as early as the winter quarter for appropriate action by the committee.

* * * *

Q. Now when the committee met sometime in late May or early June, were they—how were the matters [fol. 388] brought to their attention?

A. Now what do you mean, how was the matter—

Q. Well, how was the committee informed of what—of the names of the students and what—

A. Oh, persons who turned the names in would write out as nearly as—not in a detailed way, but in a general way the kind and caliber of conduct on the part of the students that would warrant a consideration by the committee.

* * * *

Q I'd like to understand you correctly now. You are saying that various documents were drawn up for each student, is that correct?

A. Well, the stipulations, the statements made and the green sheet that you have entered here this morning would show, yes.

Q. This sheet here?

A. Yes.

Q. Can you tell us—

[fol. 389] MR. BELLMAN: The witness is referring to Plaintiff's Exhibit 37. I think we have a copy for the court.

BY MR. BELLMAN:

Q. Now when was this document prepared?

A. There doesn't seem to be a date on the document, but sometime prior to the sending of the telegram on the 8th.

Q. I see. And was this prepared in your office?

A. The typing was done in my office, but obviously, you can see that some of these must have been prepared in other places. For instance, I'm reading from one here, cursing in his room, pouring water under his floor. This kind of thing.

* * * * *

Q. I see. Did the committee, before approving the telegrams, have this document before it?

[fol. 390] A. Yes.

* * * * *

Q. The letter states that the committee voted unanimously to deny you the privilege of continuing your [fol. 391] education.

Is a unanimous vote required to discipline a student?

A. No, it is not required. I thought Dr. Boswell established that yesterday. That's not required. Usually the vote is unanimous. That is a quorum is present.

Q. Does unanimous mean all those attending the meeting voted favorably?

A. Right.

Q. Does not mean—

A. Does not mean the whole committee, no.

* * * * *

[fol. 393] As far as Kenneth Jones is concerned, I am [fol. 394] utterly surprised at his conduct and behavior, and this is why. On at least two occasions, he has been a member of student leadership groups on our campus. He went with us last spring in a retreat for student leaders. He participated in these activities, and we looked forward to his developing into leadership roles on the campus. That he took it upon himself to play a role that seemed to me to be diametrically opposite from what a college student ought to do is far out of my expectation and beyond my fondest imagination against the backdrop of the experiences he's had with campus groups, campus leaders, so in all three instances, sir, as the dean of students, I have put forth the effort that I conceive that I should put forth as a leader of the student body to rehabilitate not only these students, but all others who

have been—who have deviated from the high standards of conduct for which the university—to which the university subscribes and which I believe is its mission.

Q. Dr. Payne, did you consider the conduct of the plaintiffs in this action to be more reprehensible than the conduct of some seventy others who were disciplined or called before the committee?

A. Well, I don't—I conceive conduct on anybody's part that deviates markedly from the standards of conduct acceptable at the university, and you can't do anything about it, as being outside—

[fol. 395] Q. Well, Dr. Payne, what I'm trying to get at is in most cases, as we understand it, and as set forth on the document that was submitted into evidence yesterday, I forget the number at this point, most students were, after some kind of conference or telephone call, readmitted to the university, and I'm wondering, was the conduct of the plaintiffs in this action more serious or viewed by the university as more serious which would warrant their having been indefinitely suspended?

A. If the implications are that there's any discrimination against these students, I would say emphatically no.

Q. Well, my question was, was the conduct—I'm not trying to imply anything, I'm asking was their conduct viewed by the administration as more serious than the conduct of the some sixty some other students who were called before the committee?

A. We have had no other students to be disrespectful to university administration, to my knowledge. We have had no other students to—I've had no other students that I've talked with personally about his conduct in privacy and he has violated that privacy and used it to debate me as dean of students and other members; if that's what you mean, we haven't had that.

Q. Do you consider disrespect a more serious offense [fol. 396] than gambling in a room, suspected of smoking marijuana in a dormitory, participation in a panty raid —I'm taking these, I'm just going through this quite quickly, I'm trying to take examples—under influence of alcohol in a dormitory, using profane and vulgar lan-

guage, had in his possession a chain to be used as a weapon on the floor. I use these as examples. I think you will agree that the entire document sets forth the charges of this nature.

Do you view disrespect as more serious than those type of charges?

A. Yes, I do. I hold to be sacrosanct respect for authority. I believe that if respect for the authority of an institution breaks down, then there's no question in my mind but what that institution is disintegrating, and I have spoken to this point, to student groups on numerous occasions. I think that one of the most serious that could happen to any institution is for the students or faculty to manifest disrespect for the authority for the existence of that institution. I think when that happens, then the institution has disintegrated. I think that's very serious.

Q. Do you think it's more serious than grand larceny?

* * * * *

[fol. 398] A. As indicated, I have to qualify my answer there depending upon the nature of that disrespect.

Q. When you say disrespect, are you referring to disrespect through comments in written literature or through speeches?

A. Well, I think this is an open manifestation of disrespect. I think that it is much more—it's much more —much deeper than that. When one writes and refers to another in a derogatory term, this is an overt manifestation of his downright disregard for not only the individual but that the individual stands for. And I think that's serious, and that is what I'm talking to.

Q. And that is indicated more forcibly than disregard for other persons through grand larceny?

A. Well, I'm not—I don't know that I'm prepared to answer that.

* * * * *

[fol. 406] Q. The committee provided a more definite set of charges?

A. Right.

Q. For attorney Creswell?

A. Yes.

Q. And these documents set forth several charges.

A. Yes.

Q. Now some of these charges were not referred to again in the committee's findings. For example, Fred Brooks was charged with illegally entering a building at the university for the purpose of conducting a meeting of a student group known as the Student Representative Association, although that association had been denied recognition by university officials.

In the findings for Mr. Brooks, no reference is made [fol. 407] to that charge, and I'm trying to determine what happened.

A. Well, the committee took under consideration all the information it had at its disposal in making its final determination.

Q. No, that's not my question. My question is, was there a finding with respect to all charges?

A. The findings were set forth in the record. Now I just don't remember what all they were, but I can say that after deliberating the case, this was the reaction of the committee.

* * * *

[fol. 408] MR. BELLMAN: And my question is, so the Court will be able to understand the committee's finding, is what happened to those other charges which are not referred to in the decision.

MR. FOX: If the Court please, I believe the witness said he didn't know, he just didn't remember that.

THE WITNESS: I just don't remember.

BY MR. BELLMAN:

* * * *

[fol. 409] Did the committee rely on any charges that do not appear in the handbook?

A. No.

Q. That's just a general introductory remark and all charges would be included in the handbook?

A. Right.

Q. In the handbook on page 17, there is a list of charges, offenses requiring severe discipline; could you

tell us which charges were relied upon by the committee for reaching its decision in these cases?

* * * *

[fol. 410] Q Well, let me—there are not that many. Was peeping tom relied upon?

A. No.

Q. Failure to observe sign-out regulations?

A. No.

Q. Illegal entry of a building?

A. That's one.

Q. Prowling?

A. No.

Q. Theft?

A. No, not to my knowledge.

Q. Sale of alcoholic beverages?

A. Not to my knowledge.

Q. Possession, use or involvement in the possession, use, or involvement in the handling or sale of narcotics and alcoholic beverages?

A. Not to my knowledge.

Q. Possessing, concealing or selling stolen property?

A. Not to my knowledge.

Q. Fighting?

A. Not to my knowledge.

Q. Destruction of property?

A. Not to my knowledge.

Q. Disrespect for university authority?

[fol. 411] A. That's one.

Q. Man striking a young woman?

A. Not to my knowledge.

Q. Any act in violation of city, county, state or federal laws?

A. Not to my knowledge.

Q. Not to your knowledge?

A. No.

Q. Any other infractions of standards of conduct that require severe disciplinary action?

A. That's an all-inclusive one.

Q. Was it relied upon?

A. It may or may not have been, I'm not sure.

Q. You were acting chairman of the hearings, were you not?

A. I was acting chairman of the hearings, yes, sir.

Q. For consideration of these matters?

A. Yes, sir.

Q. Could you tell us specifically yes or no whether that infraction was relied upon?

A. Well, categorically, I would say yes, it was relied upon.

Q. I'd like to refer to the finding, the decision as to James Booth.

* * * * *

[fol. 414] Q. I'd like to read the next sentence, after "tainted the reputation of the institution and its students."

> "He has passed out literature and talked and dressed himself in such a manner, particularly in and about the library, all calculated to cause unrest and disturb other students."

Now there's been some lack of clarity as to what the committee relied upon in terms of literature when it referred to literature that was calculated to cause unrest, and if you recall, Dr. Payne, the counsel for Mr. Booth brought to the committee certain documents which are now part of the record in this matter. Well, I think [fol. 415] they are part of the record of the committee's hearing.

Now did it rely on any literature other than that which was presented by Mr. Creswell?

A. No.

Q. So it's just these eight documents which the committee found was calculated to cause unrest?

A. I think I might add, if I may, Your Honor, that one must understand the context in which this kind of thing is done.

At the time, when these documents were being passed out on our campus, the whole atmosphere was tense and there was disruptive elements in the whole community, and students going about their normal activity would see somebody out passing out literature that would—they

would stop to read to see what this is all about, when they may have been addressing themselves to academic pursuit.

I think that—the point I'm making is that the whole atmosphere of our campus and of the community at the time when these documents were being printed and passed out, we interpreted to be disruptive to the academic processes and at least to some degree encroaching upon the academic freedom of other students who were not interested, to carry on normal academic pursuit.

Q. Did the committee take any evidence as to when these documents were distributed?

[fol. 416] A. Did they take—how was that?

Q. Evidence or hear any testimony as to when these documents were distributed on the campus?

A. Perhaps in discussion, yes, and deliberation.

Q. In deliberation?

A. Yes.

* * * *

[fol. 417] Q. Who drafted the findings that I have been referring to?

A. These findings?

Q. Yes.

A. They were drafted by the committee and legal counsel.

Q. In making your deliberations, after the hearings, did all members participate in the deliberations?

A. All members of the Faculty Advisory Committee?

Q. That's right.

A. As far as I know.

Q. Did they all vote, did all members present vote?

[fol. 418] A. Yes.

* * * *

[fol. 421] MABEL BELLE CROOKS

a witness called to testify by and in behalf of the plaintiffs, after having first been duly sworn, was examined, and testified as follows:

* * * *

DIRECT EXAMINATION

BY MR. BELLMAN:

Q. To simplify and save time, you are employed by the university and hold the position of dean of women, is that correct?

A. Yes.

Q. And you sit on the Faculty Advisory Committee?

A. I do.

Q. And you are the secretary for the committee?

A. Well, I am acting as a recorder for the committee.

* * * *

[fol. 422] Q. Well, were you at most of the meetings this summer?

A. I believe so.

* * * *

Q. You also submitted to me Exhibit thirty-seven, is that correct, this blue document?

A. Working sheet, yes, sir.

Q. Are you fairly familiar with the operation of the Faculty Committee, Faculty Advisory Committee?

A. I believe I am.

Q. How long have you been acting as recorder?

A. Off and on for about nine years.

* * * *

[fol. 423] Q. Was this document considered by the committee at any other time than June 15th?

THE COURT: What is this document?

MR. BELLMAN: The blue document.

THE COURT: And what exhibit number?

MR. BELLMAN: Exhibit 37; it's called the undesirable list.

BY MR. BELLMAN:

Q. Was this document considered by the committee at any other time than the meeting of June the 15th?

A. I'm not sure that it was. You see the—well, I'm not sure that it was.

Q. Didn't last night you tell me that that was the only time that the committee considered that document?

A. Yes. May I explain this to you, sir?

Q. I just want your answer clear, and then you can [fol. 424] explain. You did say yes?

A. This was the only time that the committee—

Q. Considered that document?

A. —considered this document as a document.

Q. Now you may explain yourself.

A. This material is drawn up not by the faculty Advisory Committee, but by personnel people, and referred to the Faculty Advisory Committee. By nature of our jobs, there are some persons who are on the Faculty Advisory Committee who are on the student personnel committee.

Q. Well, my question—then you are not contradicting your answer?

A. No, I'm just—

Q. The only time the committee considered that blue document was on June 15th?

A. Yes.

Q. And the official minutes of the committee will show that, is that correct?

A. Yes, you have it here.

Q. Did you not also tell me last night that the committee never met to consider disciplinary matters before June 15th?

A. The committee meets—

Q. I refer to these disciplinary matters.

A. The material that has come on this committee— [fol. 425] I mean on this working sheet is a compilation of materials from student personnel people.

Q. Yes, ma'am.

A. That's right.

Q. And the committee sent out telegrams or certain members of the committee sent out telegrams to the students notifying them of possible disciplinary action, is that correct?

A. Yes.

Q. And at least in one case, the telegram is noted June 8th?

A. Yes.

Q. Isn't it true that the committee never considered the blue documents before sending out the telegrams?

A. May I say this, this is a working sheet, sir.

Q. Will you please answer my question? Isn't it true—

MR. ROBERTS: Let her answer. I believe she's trying to explain it.

THE WITNESS: I'm trying to explain my—

THE COURT: All right, answer it the best way you can.

THE WITNESS: Yes. You see, by virtue of the fact that some of us are student personnel people sit on the faculty, we have information that other people may not have, because we are the people who help to bring this [fol. 426] to fruition.

Now the Faculty Advisory Committee does not always meet when the student personnel group meets, and there are certain things of course that the committee cannot see until it's all brought together. You see the Faculty Advisory Committee has to see the overall picture and not individual things.

All right, sir.

BY MR. BELLMAN:

Q. Would you read who signed this telegram June the 8th?

A. I cannot see who signed it.

Q. (Counsel points to exhibit.)

A. Well, the Faculty Advisory Committee, yes.

* * * *

[fol. 427] MR. BELLMAN: Her testimony was that the committee did not consider the charges.

THE COURT: I think you better clarify that point.

BY MR. BELLMAN:

Q. Did you not tell me last night that the full, formal committee did not consider the charges brought against some seventy students prior to June 15th, 1967?

A. May I say this?

[fol. 428] Q. Did you tell me that, and then say what you want to say.

A. Well, I—

Q. Did you tell me that?

A. The committee sat in on those blue charges on the date that's given on that material.

THE COURT: On what?

THE WITNESS: I don't know what date that is.

MR. BELLMAN: June the 15th, Your Honor.

THE WITNESS: June the 15th. Now that is on this material here as a compilation.

THE COURT: As a compilation?

THE WITNESS: Yes.

THE COURT: Well now, the question is whether they—prior to June the 8th, they met and considered the charges which are contained in this telegram, say, of June the 8th, 1967, to Jones:

> "You have not been cleared to enter the university for summer study; letter will follow. Faculty Advisory Committee, Tennessee State A&I University."

What is your answer to that?

THE WITNESS: My answer is that the committee did not see—the committee approved of what was done in this telegram, that is by virtue of their positions, but it did not see this compilation on the 15th.

[fol. 429] BY MR. BELLMAN:

Q. Did you not tell me last night the formal committee did not meet to consider the charges prior to June the 15th?

A. The formal committee did not.

* * * *

[fol. 431] Q. Did you tell me that the committee did not meet to consider the charges before June 14th or 15th, excuse me, June 15th?

A. May I say this, sir?

Q. I referred to this sheet with you last night, did I not?

A. That's right.

Q. And did you say this was the first meeting?

A. That's right, first meeting on that sheet.

THE COURT: You are going to have to be specific, what are you referring to?

THE WITNESS: This blue sheet.

THE COURT: And that's Exhibit what?

[fol. 432] MR. BELLMAN: Thirty-seven, Your Honor.

BY MR. BELLMAN:

Q. And these notations refer to case one, two, and three, and I pointed out to you last night this is case one, and this is case one.

I don't think you have quite answered my question yet, and you can give me a yes or no answer, and I will drop it.

Did you tell me that the committee did not meet prior to June 15th to consider the charges brought against some sixty some students?

A. I told you last night that—

Q. Yes, or no?

A. Well, I'm not going to answer that yes or no, because there's some mitigating circumstances. If I answer that yes or no, you have my notes there and you know that we met on some students; what I'm trying to tell you that we only met on June the 15th in terms of that blue sheet.

MR. CRESWELL: Your Honor, could you instruct her to answer yes or no?

THE COURT: Well, if it's capable of a yes or no answer.

MR. CRESWELL: It's not long ago, last night.

THE COURT: That you told him that the committee did not meet prior to June 15th to consider the charges [fol. 433] contained in that exhibit, being the blue sheet there, Exhibit 37, I believe. Can you answer that?

THE WITNESS: The answer is yes, I told him that. I would like to make a statement.

THE COURT: All right. Now go ahead.

THE WITNESS: Now the statement is that the blue sheet was drawn up, see this is a compilation, it was drawn up after we had had some meetings, because this is the way we had to get the sheet, and we had had at

least one meeting prior to that time, which was on June the 14th, with one of the students involved in this.

THE COURT: All right.

MR. BELLMAN: Your Honor, the question referred to the charges, not the blue sheet.

THE COURT: I said the charges contained in the blue sheet.

BY MR. BELLMAN:

Q. Dean Payne testified this was prepared by some secretaries who compiled the letters that came into the committee. He did not say the committee prepared it; you say the committee prepared this?

A. No, I'm not saying the committee; I told you that Dean Payne's office prepared that. I told you that last night when you asked me about it. I told you it was my working sheet.

[fol. 434] THE COURT: I think we've gone over this far enough. It seems to me, based on the evidence so far, see if this is right or wrong. In regard to this Jones case, the telegram was sent on June 8th, 1967, stating that you have not been cleared to enter the university for summer study, letter will follow. This is signed by the Faculty Advisory Committee, Tennessee A&I State University.

As I interpret this witness' testimony up to this point, this telegram was sent as a result of some information being turned in by someone to the Faculty Advisory Committee. It is not clear where it came from. And that the Faculty Advisory Committee met informally, and authorized this telegram, but did not meet formally until June the 15th, at which time the charges contained in the blue sheet, Exhibit 37, were considered.

MR. BELLMAN: I'm not sure her answer is that clear as to the informal meeting, because I think her answer is somewhat contradictory in relation to our conversation last night.

THE COURT: Well, see if you can clear it up.

MR. CRESWELL: One other thing that the information was furnished to the Faculty Advisory Committee

according to Dean Payne, and Mrs. Crooks says it was handed to Dean Payne.

[fol. 435] THE COURT: All right, Dean Payne and the Faculty Advisory Committee informally considered it, and then sent this telegram.

BY MR. BELLMAN:

Q. Informally considered charges that were not written up?

A. Not informally, not charges not written up. Each spring we get together and bring up materials on students relative to their activities.

* * * *

THE WITNESS: Each spring, student personnel service workers bring to an open meeting of their colleagues a list of students they believe should come up for consideration in terms of conduct. This material is gathered in the office of the Dean of Students. His office makes a compilation of this material. You understand?

BY MR. BELLMAN:

Q. Yes.

A. And that's how we get the material for the blue sheet, and it's not given—the Faculty Advisory Commit-

[fol. 436] tee has nothing to do with getting the material. The material is presented to the Faculty Advisory Committee, if necessary, and if not, it might be resolved otherwise; some students may withdraw or are not even in school at the time.

* * * *

Q. Who sent the telegrams?

A. I did not send them.

Q. Under whose authorization were the telegrams sent?

A. I told you there was an informal meeting of the Faculty Advisory Committee, and I was not in that meeting.

* * * *

[fol. 452] THE COURT: Is that all now of the proof?

MR. CRESWELL: Yes, sir. We have some other witnesses that we might have called, and I wanted at this time to get into the record a proffer of who they are, and what they might testify to.

* * * *

[fol. 453] And Wallace Dooley, who will testify as to the drafting, preparation and duplication of the pamphlet which—the mimeographed material which allegedly [fol. 454] was handed out by Kenneth Jones, which was introduced in the hearing and introduced here, I believe that's Exhibit 6, Your Honor, but you understand the one I'm talking to, to the effect that to his knowledge, Kenneth Jones had no part in the formulation or deliberation and preparation of this, nor to his knowledge did. Mr. Jones hand it out on the university campus.

Now we offer these and would also state that when we received the specification of charges on some of these charges, particularly that of Mr. Jones and the literature, had we had a copy of the literature that he was alleged to have handed out or had we had more than the two days between the notice and the time of hearing, we could have offered their testimony into the hearing.

MR. FOX: If the Court please, as I understand it, the testimony or evidence that's offered is merely cumulative of what is in the record, and what has been testified heretofore in Court for the most part, and I don't understand that this Court considers it to be its responsibility to weigh the evidence with respect to the merits of the case. Its only question is whether or not sufficient notice was given and then whether or not the action, the result or the verdict of the committee was reasonable, and I think—

[fol. 455] THE COURT: I think we could treat this as a proffer of evidence that might have been offered had there been further time afforded to the student in regard to the hearing before the committee.

MR. CRESWELL: I point out to the Court—

THE COURT: Of course it's not in shape now to be considered as substantive evidence.

* * * *

MR. FOX: If the Court please, I believe the Court stated, if I understood correctly, the record does show that these complainants were given an opportunity to present whatever other witnesses they had at the hearing and they didn't present it.

THE COURT: Well, that's something we will have to look into.

* * * * *

[fol. 457] JAMES MONTGOMERY

a witness called to testify by and in behalf of the defendants, after having first been duly sworn, was examined, and testified as follows:

DIRECT EXAMINATION

BY MR. HEDGEPATH:

Q Mr. Montgomery, are you a student at Tennessee State A&I University?

A. Yes, I am.

Q. How long have you been a student there?

A. It will be four years this December, over three and a half years.

Q. What is your capacity as a student, what role do you play as—

A. At this time I am president of the student body.

Q. President of the student body. When were you elected?

A. In May of 1967.

* * * * *

[fol. 462] Q Mr. Montgomery, in your capacity as Student Council or student body president and in your capacity as a student for now almost four years at the university, have you ever experienced personally any suppression on your part, that is by the administration, so that you have not been allowed to express yourself as a student?

A. By no one, administration, faculty, or other students.

Q. Has it been your experience as a student that you have been allowed to participate in and to submit grievances to the administration and to the faculty where you thought grievances were called for?

A. I have partaken in some.

Q. Have you participated in retreats, that is weekend or daily meetings during the year while a student at A&I which students would get together and debate what they thought the big problems that existed on the campus?

A. I have.

* * * *

[fol. 463] Q. Would you tell us about this? Let's get along as quickly as we can. Was there a retreat in the spring of '67?

A. There was.

Q. Were students invited to attend?

A. Yes, they were.

* * * *

[fol. 465] Q. Which of the complainants attended this retreat, Mr. Montgomery?

A. Who are the complainants in this incident?

Q. The complainants are Mr. Brooks, Mr. Jones, and Mr. Booth.

A. Just the last two, Mr. Jones and Mr. Booth both were present on the spring retreat.

Q. Did they participate in the group?

A. Yes, they did.

Q. Was either one or both of them active in the groups?

A. Mr. Booth served as a chairman of one of the workshop groups; Mr. Jones probably just had membership in the other, but both were active.

Q. These group meetings, have they been conducted since you have been on the campus year after year?

A. Every year there are at least two spring retreats, at least two retreats.

Q. To your knowledge, has there ever been any person reprimanded for participating?

A. Not to my knowledge.

Q. Do you know whether or not during the period of your time at A&I and particularly this past academic year, do you know whether or not there were ever other groups who submitted grievances to the administration?
[fol. 466] A. There were other groups that registered complaints. I wouldn't say that they submitted grievances, but there are other groups that have continually complained. I know this.

Q. Do you personally know or has it ever come to your attention as student body president whether or not anybody has ever been reprimanded because of their free expression?

A. It has never come to my attention, as far as criticism is concerned, criticizing the operations of the university, from an administrative standpoint.

Q. As student body president and as a student leader, can you say whether or not the majority of the student body or any person or any group in the student body that you know of feels any fear because of administration restrictions on expression?

MR. BELLMAN: Your Honor, we object to that question.

THE COURT: Whether any student—

MR. HEDGEPATH: To his knowledge, whether any group of students or whether any student feels any fear or has any reason to feel any fear because of administrative restrictions on free expression.

MR. BELLMAN: I don't think he can talk about what other students feel.

THE COURT: That would be a pretty broad ques-
[fol. 467] tion. How many students are out there at A&I?

MR. HEDGEPATH: The record shows almost five thousand students.

THE COURT: You are asking him if anyone or group—

MR. HEDGEPATH: I'm asking if he knows of anyone if he knows of any situation—

THE COURT: Well, he can state if he knows of any condition of suppression of freedom of speech or assembly

or interference with expression of views or anything of that sort.

Do you know of any such administrative interference?

THE WITNESS: No one student has come to me and said that they attempted to criticize and as a consequence of this attempt were reprimanded or threatened or anything like this.

Now I don't know whether or not you are confusing the atmosphere of apathy with that of apprehension. I don't think there is one and the same, but as far as apprehension, no one person or group has ever come to me and said, if we say this, we will get put out of school, because if so, I would have proceeded to ask. I've never heard of such a case arising.

* * * *

[fol. 468] CROSS EXAMINATION

BY MR. CRESWELL:

* * * *

[fol. 469] Q. And I'm asking if you know of any additional organizatons or meetings or attempts by students to bring grievances before the university that were not sponsored or sanctions by either the administration or this—as a student council.

A. Well, I think you have to understand this—I'm not trying to evade your question, because I'm going to answer it, but you've got to understand that any organization, and I've been a part of many organizations that have submitted grievances, Panhellenic Council, and many things, but you can't say they are divorced from the university, because they have to be sanctified, but as far as groups outside of the university, I don't know.

Q. Let me clear that up. When I talk about groups with university sanction, I mean administratively sponsored organizations, organizations sponsored by the student council, or other officially recognized student groups on the university. I'm asking if you know of any other than those three categories that I have named?

A. No, I know of none.

Q. No students attempted—

[fol. 470] A. That have attempted, no.

Q. That you know of?

A. That I know of.

Q. That have attempted to speak through other than officially recognized channels?

A. That's right.

* * * *

[fol. 471] JOSEPH A. PAYNE, JR.

a witness called to testify by and in behalf of the Defendants, after having first been duly sworn, was examined, and testified as follows:

DIRECT EXAMINATION

BY MR. FOX:

* * * *

Q. What were the proceedings for Mr. Douglas coming back to school?

A. The Faculty Advisory Committee took cognizance of those students that it didn't have sufficient evidence or didn't appear to have sufficient evidence to keep out of school. It reviewed those cases. For instance a student where the riots—participation in the riots was all the evidence showed against him, the Faculty Advisory Committee took cognizance of this, and agreed that this was [fol. 472] not sufficient evidence inasmuch as these cases were presently in the courts and no decision had been made, and it was the considered opinion of the committee that it should not deprive the students from continuing their education until such time as the final determination had been made with specific reference to the riots in the courts.

Q. One more question now, Dr. Payne. Mrs. McGruder testified yesterday indicating that the administration was opposed to civil rights organizations and some other organizations on the campus.

Will you explain the attitude of the administration with respect to those organizations?

A. The administration, so far as I know, holds no brief against any civil rights organization, so long as its constitution, the national constitution of that organization is not in conflict with the policies and the missions of the university as those policies are set forth, and as that mission is conceived.

To support that, we do have a chapter, a student chapter of the National Association for the Advancement of Colored People on our campus. It may not be this year, but certainly all the group would have to do would be to file the appropriate form for certification, and it would be recognized on our campus as any other campus organization would be.

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EXHIBIT NO. 1

BEFORE THE FACULTY ADVISORY COMMITTEE
TENNESSEE A&I STATE UNIVERSITY

KENNETH JONES

v.

TENNESSEE A&I STATE UNIVERSITY

Saturday, September 16, 1967
Nashville, Tennessee.

The Faculty Advisory Committee was called to order at 8:00 a.m., in Room 207, Administration Building, Tennessee A&I State University, Nashville, Tennessee, by Dr. J. A. Payne, Acting Chairman, presiding.

* * * *

PRESENT

FACULTY ADVISORY COMMITTEE

Dr. A. B. Boswell, Chairman
Dr. J. A. Payne, Acting Chairman
Dean Mable Crooks
Dr. George Davis
Dr. G. M. Sawyer
Mr. L. R. Holland
Dr. Jamye Williams
Dr. R. N. Murrell
Dr. James M. Conley

* * * *

OFFICE OF THE ATTORNEY GENERAL, STATE OF TENNESSEE:

Mr. Robert H. Roberts, Asst. Attorney General
Mr. Robert F. Hedgepath, Asst. Attorney General

* * * *

FOR MR. KENNETH JONES:

Mr. I. T. Creswell, Jr., Attorney at Law

(Original) Office of the Attorney General

[fol. 2] PROCEEDINGS

DR. PAYNE: Let the record show that this is a hearing which is being held by the Faculty Advisory Committee of the Tennessee A&I State University, Nashville, Tennessee, on Saturday, September 16, 1967, to determine whether certain students who have requested such hearings should be allowed to re-enter this institution of higher learning in the fall quarter of 1967.

Let the record show that these former students, namely, Wesley Brooks, James Booth, Robert Butler, Calvin Connor, and Kenneth Jones, were advised as early as June 21, 1967, that this committee had reviewed their records and made a preliminary finding that they would not be readmitted for an indefinite period unless the named students presented themselves before the committee to answer the charges against them.

Other correspondence was had with the students, which advised them that they would be allowed to have counsel represent them at this hearing; and charges against them were more particularly outlined.

* * * *

[fol. 3] MR. CRESWELL: There are a few preliminary matters that I think we need to deal with on both [fol. 4] sides before we get into any individual cases or the matters concerning them. Kennth Jones is here and scheduled to be before this committee first.

I would request—as I have preciously, and as I think I did on four occasions in letters to Dr. Boswell or other members of the committee—that I be given a Student Handbook or some statement of student rules which governs and sets out standards of conduct for the students of Tennessee A&I State University. I think I requested that back as early as July 31, and in a number of letters I have reiterated this request. I have yet to be supplied with this, and I think this is a necessary thing before we go on, so that I can be aware of what rules may have been put before these students to make them aware that certain conduct may or may not have been objectionable and may have subjected them to punishment.

I have also requested and have not been given a membership list of those members who are on the Faculty Advisory Committee. The last request was made through the mail of Dr. Boswell. I am not sure that all the people on the committee, that the full committee, is even present at this hearing. If you could supply me with a list of the members of the committee, I would appreciate that also.

* * * *

[fol. 5] Your initial statement that was read into the record has a few—if not errors in it—some things I would like to either amend or correct. You made reference to the fact that these students were first advised that there had been some action taken against them as early as June.

I believe your initial telegrams went out about June [fol. 6] 6 or June 8, and that they were advised of their right to counsel. I think the record should show that, upon my first inquiry and correspondence with this committee, I was told very specifically—as were some of the students whom I represent—that counsel would not be allowed to sit in and represent them at the initial hearings.

It was for this reason that I advised my students not to show up at some of these earlier hearings, where my understanding from Dr. Boswell was that they would not be allowed to have me or any other counsel represent them. I think the record needs to show this.

It was only, again, in the telegram from Dr. Boswell to me on the eighth of September that we were advised that we could have the right to counsel.

One other procedural matter which is in your statement. I think you referred to this—and I don't remember the exact words—as a hearing on whether these students will be readmitted.

We maintain, and maintain firmly, the position that, if there has been any action taken against these students—and there certainly has—the action is not such that places them in a position of being outside the student body applying for readmission. This hearing is not one

we consider whereby the individuals are coming back and applying for readmission.

[fol. 7] We consider that the students whom I represent have been acted against wrongly, and therefore they maintain their position as one of students who are in good standing; and that the purpose of these hearings is for you, the committee, to justify the actions of denying admission to these students as they sought to enroll in summer school, the first or the second session.

For these reasons I think it makes a great deal of difference as to how we are going to consider this hearing, whether it is one whereby these students, through me, are seeking readmission—we don't consider that they are seeking readmission. We consider that they are students in good standing, and this hearing is to determine whether they should be expelled or whether any action should be taken against them.

I did receive from Mr. Hedgepath on day before yesterday, about two-thirty in the afternoon—is that about right, when you brought those specifications up, day before yesterday?

MR. HEDGEPATH: It was at my lunch time.

MR. CRESWELL: It was sometime in the afternoon. I returned to my office about two-thirty and they were there. He called me earlier that morning and said they were brought out.

I have many serious reservations about some of these specifications. I am going to object to some of them. I [fol. 8] will tell you now that the nature generally of what I was requesting in these earlier letters was a delineation of the actions on the part of these students that had caused the committee to take its action of expelling them. That action, I gather, was initiated sometime in late May or early June, since the first telegrams were dated about June 8.

The specification of charges in many of these things point to alleged conduct on the part of these students that took place after the committee had acted. It is our position, our firm position, that no action that took place after the committee acted can be used to justify the committee's action in expelling these students.

In other words, if you sought to expel or deny readmission to a student back in June, you could not have done it based on any action that happened in July or August; and therefore all the specification of charges relating to each student that refer to incidents that took place after your committee's initial action and consideration on these students will be objected to.

Also in these specifications of charges there are references made to conduct or to events that happened possibly before the committee acted, but which, by a comparative reading of your initial letters that were sent out about, I guess, the twenty-first of June—those form letters where you first stated why you had acted—comparing [fol. 9] that with the specification of charges, there are things that are brought out and brought up in the specifications that were delivered to me day before yesterday that seem not to be included in any of the general charges that were mentioned in those form letters that were sent out about the twenty-first.

Again my objection to that is that you are bringing up new things; you are bringing up things that you had not alluded to before. I feel that, if you stated your reasons, no matter how vague, in those letters of the twenty-first, it is too late now to go in and try to pull out new things to justify the actions of the committee—if, in fact, the committee did not act on these beforehand.

* * * *

[fol. 11] MR. HEDGEPATH: Mr. Chairman, the record should show that Mr. Creswell now has a handbook. We would like to say this about the handbook matter. His client is a student at this school. All students are furnished handbooks. No one in this hearing is probably more familiar with the handbook than his client, because he attends this school.

Furthermore, we are unable to understand the significance of Mr. Creswell's thorough statement about [fol. 12] whether or not his client would be allowed counsel and representation, inasmuch as Mr. Creswell is here.

Now there is one other very important matter as we see it. Mr. Creswell insists that this committee is called before the carpet in order to justify its action which it

took in June. He says that you expelled his client, Mr. Jones, in June. We submit that Mr. Jones is not yet expelled; and, as a matter of fact, may not be. But that if he is expelled, it will be because of the activities that he participated in which violated the rules of the handbook and that sort of thing.

For that reason, we insist that all of his activities which violate the rules of the handbook, which may have occurred prior to this morning, are appropriate for this committee at least to consider in determining whether or not the notice they gave him in June that he would have to appear before this committee should be made final so as to expel him now.

We can't possibly visualize this committee's closing its eyes to the things he has done or hasn't done, if anything, during the summer of 1967. It would be impossible in the first place. And in the second place, I don't think it would be appropriate. We simply insist that the function of this committee, after having given notice, after having allowed this student to come in before the committee to produce any evidence he can, to make any state-
[fol. 13] ment he will with his lawyer—the function of this Faculty Advisory Committee, after conducting a full hearing, is to determine whether or not this student ought to be expelled.

. . . . .

[fol. 19] DR. PAYNE: At this point we would like to ask Mr. Jones to respond to the first charge.

. . . . .

[fol. 21] MR. CRESWELL: Your statement in the specifications I find to be vague according to minimal standards of notice and due process. He is charged with conduct unbefitting a university student. We don't know exactly what kind of conduct he was supposedly engaged in. We don't know how he created a disturbance.

It is an open question that he created a disturbance; but we don't know what you, the committee, feels he sup-
[fol. 22] posedly did. The worm on the plate obviously is evidence now. The assumption that the worm was obviously not processed through the kitchen is one that I don't think anybody on the committee can make.

Did anybody on the committee see this? I would rather doubt it. It is very obvious that this worm was not processed—the evidence might show this. His actions on the occasion exemplified a disrespect for university authority—I am reading from the charges. What actions? I guess this will come out here, but they are stated in the letter and we are strongly objecting because we should have had this letter as early as July 31, and certainly by the time Mr. Hedgepath brought the specification of charges up to my office day before yesterday.

MR. HEDGEPATH: The tragedy, it appears to me, to be that Mr. Creswell does not know what his client has been involved in. He is charging this committee, it appears, with the responsibility of itemizing for him in the most minute detail those facts and circumstances which no one knows better than his client.

It is not Mr. Creswell who must be advised of these matters, but it is his client. His client was told in these specification of charges that there was an incident during the school year which involved a worm on a plate served in the cafeteria. The food was served to one of the stu- [fol. 23] dents. He reacted in a manner unbefitting a college student.

MR. CRESWELL: Is that a conclusion?

MR. HEDGEPATH: That is a charge, Mr. Creswell. You come in here and say that you ought to have a copy of our report on the incident. Your client knows about it if it occurred.

MR. CRESWELL: If it occurred.

MR. HEDGEPATH: If it occurred, your client knows about it. But you attack our notice. It would appear to me that you are attacking our notice rather than our ability to prove what we have notified you of. We strongly object to your attack on our notice because from that, your client obviously would be able to tell you about it if it occurred.

[fol. 24] MR. ROBERTS: Could I ask a question? I want it understood this is not cross-examination or anything like that. It is just for my own information, just to clear up the record. He has made two or three

references to, on the day of this cafeteria incident, photographers or newsmen and so forth.

I have not seen any notice that went out to him about that. What occasioned him to bring up the business? I am just in the dark about what this is about.

* * * * *

[fol. 56] DR. PAYNE: * * * Does the committee wish to introduce any evidence concerning the first charge, or ask the student any questions about it? If not, we will move to the second charge.

"You are charged with distributing literature and soliciting students, all of which was designed to boycott the registration at the University for the Fall Quarter of 1967.

I hold in my hands copies of a statement, mimeographed—

MR. HEDGEPATH: Give Mr. Creswell a copy of it.

DR. PAYNE: Pass this down. My question is: Sir, how do you answer to this charge?

MR. CRESWELL: He is not going to answer to this charge at all, except to object to it as we have before, that this is something that came up after the fact of the committee's action, something that has been added. We are not here trying to justify Mr. Jones' existence.

We are trying to explain the one thing that you mentioned in your earlier letter, that you mentioned in the specification of charges. I have noted an exception to this charge. I would also like to note an exception to this handout that has just been given me, in that I have never seen it before. It has never been given to me.

I have never seen it before and I haven't had time to read it yet. The objection I have, of course, is that this has been in the committee's hands for some time. It [fol. 57] should have been part of the specifications.

* * * * *

[fol. 70] DR. PAYNE:

I believe we were at the point for the next charge, which was concerning the distribution of literature on the campus which was designed to boycott registration

at the university for the fall quarter, which act occurred during the summer of 1967.

We have in evidence what was distributed on the campus. Mr. Jones, do you want to make a comment on that?

MR. CRESWELL: We have already noted a couple of exceptions, both as to the charge and as to the evidence, the two-page handout that you have given us—which I assume is the same one everybody else has here.

I have some reservations because of these objections as to whether we should even comment on this. I think, however, in the interest of really a full disclosure and serving Mr. Jones' best interests and also the school's, if the committee wishes to ask him certain questions concerning this leaflet and only concerning this leaflet and the distribution thereof, I will allow him to answer that and suggest and advise him that he should.

I would say that we should be very careful, all of us, in exploring this area not to get too far outside of what our main purpose is here. I don't want to get too far into that.

[fol. 71] Go ahead.

DR. PAYNE: Do you have any questions?

MR. HEDGEPATH: Except to say in a preliminary way that we have here a statement of what purports to be an apparent history of people in this country and an attack on organizations, and what appears to be an attack upon both the campus of this university and the administrators of the school.

I think that it would be desirable—certainly it would—to be sure that this document is typed into the transcript here, because one of the charges is that he distributed this material. We want to know when we read the record what the material is all about.

MR. CRESWELL: I don't see anywhere in here that there is any reference to Tennessee A&I University, or that there is any reference to Kenneth R. Jones. I question the relevancy of this.

MR. ROBERTS: I think one thing is relevant at this time, and that is Mr. Jones should state whether or not he did carry these and distribute these pamphlets that we

are referring to, and which will be put in the record for whatever they are worth.

* * * *

[fol. 72] MR. CRESWELL: Mr. Jones, did you distribute this pamphlet in any general distribution to students on the A&I campus at any time during the summer?

MR. JONES: No, I didn't.

DR. CONLEY: One question. Mr. Jones, before this committee, I noticed you were not sworn in. That is, you are not testifying under oath. This committee does expect you to give us the truth.

MR. CRESWELL: I think that's understood.

DR. CONLEY: I would like for you to answer this question, sir. Are you testifying to the truth?

MR. JONES: Am I testifying to the truth?

DR. CONLEY: Yes. Are you telling the truth, sir?

MR. JONES: Yes, I am.

DR. CONLEY: You are what?

MR. JONES: Telling the truth.

DR. CONLEY: Thank you, sir.

MR. HEDGEPATH: If the Dean please, we are going to offer a witness who would testify that he saw Mr. Jones distributing this material. It will probably take a few minutes to get him. We would like to move on to the next charge, if we could, if there is another one.

DR. PAYNE: There is one more—there are two more charges. I shall go to the next one on the second page.

[fol. 73] "You are charged with having been recently arrested by the Nashville Metropolitan Police Department at Fortieth Avenue and Clifton Road upon a charge of disorderly conduct. Pursuant to that arrest, you were convicted and fined $50.00 by the Judge of the Metropolitan City Court."

I have before me now a history sheet bearing your picture and your name and address and the charge.

MR. CRESWELL: Let me interrupt you. Possibly I can save the committee a little bit of time here. If you want that in the record, I am going to raise the same

objection to this charge in that it is one that happened afterwards.

If you want it in the record, go ahead and enter it, noting my exception thereto. I can state that Mr. Jones was this summer arrested and charged with disorderly conduct and vagrancy. He was brought before Judge Doyle of the Metropolitan Court. I represented him on that occasion. There were no witnesses other than the arresting officers. There was some conflicting testimony between Mr. Jones and the arresting officer.

Judge Doyle found Mr. Jones guilty on two charges—one of vagrancy—and the case has been appealed.

MR. HEDGEPATH: Who appealed it?

MR. CRESWELL: He did.

MR. HEDGEPATH: In other words, he was found guilty?

[fol. 74] MR. CRESWELL: He was found guilty on both counts and he has appealed this. The appeal has not been heard. As you know, this will be a new trial, a trial de novo, when it is heard. There will be no record of testimony and so forth brought up on the appeal. This is not a final conviction. I as his attorney have very serious reservations about the propriety of the whole matter.

. . . . . .

[fol. 78] Before I go to the next charge, the next and final charge of this case, I would like to offer the Student Handbook as part of the record in this case.

. . . . . .

"You are charged with continuous disrespect for University authority, all of which is a violation of Chapter 4, Student Handbook, 'Discipline and Honor,' pages 17 and 18, and Chapter 3, 'Conduct,' page 11."

MR. CRESWELL: As to the question here, I only received this latest copy of the Handbook—and I don't gather it is even the latest copy of the Handbook. It is dated 1965-66. Anyway, I received this copy of the Handbook just today.

I am wondering whether there are any more specific charges under these sections that you are quoting out of

the Handbook, or is this the general authority that you are referring to?

If this is the general authority which you are referring to under the umbrella under which you are putting these other allegations, then I think really we don't need to go into this. We have already had all of our discussion that we need to have.

Mr. Hedgepath, do you have any comments?

MR. HEDGEPATH: That's right. I think the last statement was designed so as to pinpoint the specific regulation which we say he is in violation of, which [fol. 79] would give the committee authority to act, period.

MR. CRESWELL: The record will note that none of the telegrams or letters prior to the one two days ago made any reference to the Handbook or these particular pages.

DR. CONLEY: Mr. Chairman, may I make one observation here? The Handbook given the defense attorney here is '65-'66. For the record, I think it should show that we were operating on a current Handbook, '66-'67. I think you have copies of that. Apparently we have a lot of extra copies of the one that the earlier one covers. I have a copy here now for '66-'67, the school year in which the alleged events were committed.

I have available in my office additional copies, if that is important. The same pages are mentioned.

* * * * *

[fol. 80] MR. CRESWELL: I might as well get this in. My objection to Mrs. Knight is the same objection that I raised before to Mr. Dozier, and that is there was no notification of the witness or what the witness would testify to, which of the various charges her testimony would be in reference to—all in violation of some minimal standards of notice and due process which have been set out in the Dixon case which I referred to earlier.

* * * * *

DR. PAYNE: Ladies and Gentlemen, this is Mrs. Vernella Knight, who is a staff employee in the university cafeteria. We have called Mrs. Knight as one who

actually saw Kenneth Jones passing out leaflets around the cafeteria earlier.

I present Mrs. Knight for any questions that anybody would like to ask.

MR. HEDGEPATH: Mrs. Knight, when did you see Mr. Jones passing out some papers?

MRS. KNIGHT: It was during the cafeteria hours—you know, just before the cafeteria opened.

MR. HEDGEPATH: What month was this?

[fol. 81] MRS. KNIGHT: It was around the spring quarter.

MR. CRESWELL: If it was around the spring quarter she was talking about, it seems to me you can excuse her now. This thing very definitely says that this occurred during the summer of 1967 when they are talking about passing out literature.

If she is going to talk about the spring, I would like to thank her for coming over here, but she is not talking about what this charge is talking about.

MR. HEDGEPATH: We will excuse our own witnesses, Mr. Creswell.

MR. ROBERTS: If you don't mind.

MR. HEDGEPATH: When the time comes. It was in the spring quarter, you think, that you saw him?

MRS. KNIGHT: You know, between May and June.

MR. HEDGEPATH: Between May and June?

MRS. KNIGHT: Yes.

MR. HEDGEPATH: Do you know whether or not it was after exams?

MRS. KNIGHT: I'm not sure of that.

MR. HEDGEPATH: But it was somewhere in May or June 1967?

MRS. KNIGHT: Yes.

MR. HEDGEPATH: Did you happen to read the paper that he was handing out?

[fol. 82] MRS. KNIGHT: No. I glanced at it. I didn't read it.

MR. HEDGEPATH: Would you recognize it if you saw one of them again?

MRS. KNIGHT: Yes.

MR. HEDGEPATH: I want to show you this one. Does that appear to be a copy of the type of document that he was distributing?

MRS. KNIGHT: Yes, this is one of them.

MR. HEDGEPATH: That is one of them?

MRS. KNIGHT: Yes.

MR. HEDGEPATH: Did he give you one of them, Mrs. Knight?

MRS. KNIGHT: No, he didn't give me one personally.

MR. HEDGEPATH: How many did you see him hand out?

MRS. KNIGHT: Quite a few.

MR. HEDGEPATH: Did he accompany this with any speech-making that you remember?

MRS. KNIGHT: No, I sure don't.

MR. HEDGEPATH: Did anybody that he gave one to mention it to you?

MRS. KNIGHT: Yes, everybody was talking about it in the cafeteria.

[fol. 83] MR. HEDGEPATH: Everybody was talking about it?

MRS. KNIGHT: Yes.

MR. HEDGEPATH: By everybody, you mean the students?

MRS. KNIGHT: The students and all the personnel.

MR. HEDGEPATH: You could name some of those students, I suppose, couldn't you?

MRS. KNIGHT: You know I know them—

MR. HEDGEPATH: You could spot them?

MRS. KNIGHT: Yes.

MR. HEDGEPATH: Other people in personnel, the employees, have talked about the fact he was distributing this?

MRS. KNIGHT: Yes.

MR. HEDGEPATH: People you work with?

MRS. KNIGHT: Yes.

MR. HEDGEPATH: People still working for the university?

MRS. KNIGHT: Yes.

MR. HEDGEPATH: You don't really know whether these students are going to come back?

MRS. KNIGHT: No, I sure don't.

MR. CRESWELL: Mrs. Knight, you work for the university?

MRS. KNIGHT: Yes.

MR. CRESWELL: In what capacity?

[fol. 84] MRS. KNIGHT: Head cashier.

MR. CRESWELL: In the dining room?

MRS. KNIGHT: Yes.

MR. CRESWELL: How long have you worked for the university?

MRS. KNIGHT: Six years.

MR. CRESWELL: Have you known Mr. Jones?

MRS. KNIGHT: I know of him. I don't know him personally. I have seen him.

MR. CRESWELL: Did you know him by name?

MRS. KNIGHT: Yes, I knew him by name.

MR. CRESWELL: Has he had any direct business with you in regards to handing out any leaflets?

MRS. KNIGHT: No.

MR. CRESWELL: So the only leaflet that you have ever seen was one that somebody told you he handed out; right?

MRS. KNIGHT: No; he was passing them out.

MR. CRESWELL: He was passing out leaflets, but the only thing you saw was something that someone else handed to you and told you that this is what he gave me? Is that correct?

MRS. KNIGHT: Mrs. Wilson in the cafeteria saw him personally handing these leaflets out—the secretary in the cafeteria.

[fol. 85] MR. CRESWELL: My question is: The only knowledge that you have that this may have been something that he was handing out was that you saw him handing out something, and someone told you that this was what he was handing out. Right?

MRS. KNIGHT: That someone told me what he was handing out?

MR. CRESWELL: Yes, that this is what he was handing out. He never gave it to you in your hand; someone else gave you a copy of it. Right?

MRS. KNIGHT: No, I picked the leaflet up off the table.

MR. CRESWELL: Off the table?

MRS. KNIGHT: Yes. He was handing them out.

MR. CRESWELL: In the cafeteria?

MRS. KNIGHT: Yes.

MR. CRESWELL: But you don't know that this is what he was handing out; you picked it up off the table?

MRS. KNIGHT: Yes, I know that's what he was handing out.

MR. CRESWELL: How do you know?

MRS. KNIGHT: Because he had it.

MR. CRESWELL: Did you see what he had in his hand, or did you just see a leaflet on a table?

MRS. KNIGHT: It was just like that.

[fol. 86] MR. CRESWELL: In other words, two sheets of paper stapled together?

MRS. KNIGHT: Yes.

MR. CRESWELL: And you stated that this was in the spring quarter?

MRS. KNIGHT: It was around the spring quarter; around the spring or summer quarter.

MR. CRESWELL: Around the spring or summer quarter?

MRS. KNIGHT: It was around that time.

MR. CRESWELL: Around what time?

MRS. KNIGHT: The spring or summer quarter.

MR. CRESWELL: How late?

MRS. KNIGHT: It wasn't late.

MR. CRESWELL: It was not late in the summer?

MRS. KNIGHT: No.

MR. CRESWELL: How late do you think it might have been?

MRS. KNIGHT: I don't know. It didn't faze me that much, to pay it that much attention.

MR. CRESWELL: Your general impression was that it was in the spring or early summer?

MRS. KNIGHT: Yes.

MR. CRESWELL: I have no further questions.

[fol. 87] MR. CRESWELL: * * *

Kenneth, you have read this document, haven't you, during the recess?

MR. JONES: Yes.

MR. CRESWELL: I want to ask you again, particu-
[fol. 88] larly taking it in light of a question that one of the committee members raised that you are not under oath, but asking you if you are telling the truth in considering your answers: Did you ever pass this document out to students at Tennessee A&I State University or other people on the Tennessee A&I State University campus as an expression of your views, or in an attempt to bring about or encourage the boycotting of registration by any students on the university campus?

MR. JONES: No, I didn't.

DR. PAYNE: Is there anything further in this case?

MR. ROBERTS: We have nothing further.

MR. CRESWELL: May I ask just as a bit of curiosity as to what is going on now? Are we finished with this hearing?

DR. BOSWELL: Just a minute. They are trying to check a witness, I think.

DR. PAYNE: We have in this regard just one more witness who will testify here. He will come in shortly. I hate to delay you. I certainly feel that we ought to get testimony from this witness.

MR. CRESWELL: I again note the same exception to Dr. Davis as a witness, and also request that, even though that exception refers to prior notice, I would just
[fol. 89] back that up in that at the beginning of this hearing you had some idea, I imagine, that you were going to call Dr. Davis and various other people. The hearing has come to an end twice; and twice you have decided that you are going to go out and get another witness.

If I could even just have had enough notice at the beginning of the hearing as to who you are going to call, this might help us a little bit. We have ended it; there are no further questions; and then someone goes out to get another witness.

Is this going to be your last one?

DR. PAYNE: To that, Mr. Creswell, I would have to re-echo

MR. CRESWELL: I understand Dr. Davis is a very busy man and he can't just sit on call.

DR. PAYNE: We didn't know you were going to present telegrams and affidavits from Taliaferro.

MR. CRESWELL: Just one.

DR. PAYNE: President Davis and members of the committee, I hold in my hand a document that was circulated around the canopy. I should like for you to take a look at this document. Have you seen it before, and is there anything else you would like to say about it before the committee?

MR. HEDGEPATH: Is that the same document we have been talking about?

(fol. 90) DR. PAYNE: This is the same document we have been talking about.

PRESIDENT DAVIS: Yes, I have seen this. Mr. Jones gave me this—reached me one out of his own hand when I was on my way to my office not too many weeks ago. He personally reached me one personally just as I came into this building, reached on this side. He reached me one personally. I went upstairs and read it.

DR. PAYNE: Who else that?

PRESIDENT DAVIS: This man right there [indicating].

DR. PAYNE: Any questions.

PRESIDENT DAVIS: And by the way, he had an awful. He just—caught me one.

MR. CRESWELL: President Davis, do you remember, sir, the approximate date of this?

PRESIDENT DAVIS: It was during the summer.

MR. CRESWELL: During the summer. Sometime. Do you recall the month? Was it August or July?

PRESIDENT DAVIS: I wouldn't try to say what the month was. It was during the summertime.

MR. CRESWELL: Was there any dialogue during this time between you and Mr. Jones?

PRESIDENT DAVIS: No.

MR. CRESWELL: Did he make any comment to you?

(fol. 91) or you to him?

PRESIDENT DAVIS. No. He just handed me one and I took it up to my office.

MR. CRESWELL. Did you know beforehand at that time?

PRESIDENT DAVIS. Oh, yes.

MR. CRESWELL. And this was sometime during the summertime?

PRESIDENT DAVIS. During the summer season.

MR. CRESWELL. When since, students very [illegible] Approximately how many leaflets are you referring to when you say he had a whole bunch of them, or something like that?

PRESIDENT DAVIS. Yes. [illegible] I would say.

MR. CRESWELL. You are sure it [illegible]

PRESIDENT DAVIS. [illegible]

MR. CRESWELL. I don't think I have any more questions.

Kenneth, have you ever seen this pamphlet before today?

MR. JONES. Yes, I have.

MR. CRESWELL. [illegible]

MR. JONES. [illegible]

MR. CRESWELL. [illegible] MR. JONES. [illegible]

MR. CRESWELL. Did you ever give the [illegible] copy of it?

MR. JONES. No, I didn't.

MR. CRESWELL. [illegible]

MR. JONES. Yes, I did, also.

MR. CRESWELL. Did you ever give the [illegible] copy of anything?

MR. JONES. I would have probably [illegible] of a black Queen I am not sure.

MR. CRESWELL. [illegible]

MR. JONES. Yes, sir.

MR. CRESWELL. [illegible]

MR. JONES. Yes.

MR. CRESWELL: WELL. You stated that you have seen this before, and on approximately the eighteenth of July, I believe you said. Can you give me the circumstances under which you saw it?

MR. JONES: A friend I have -- is it all right to use his name?

MR. CRESWELL: Go right ahead. I want you to tell what you can remember, what you know about this.

MR. JONES: Lois Poe was writing and putting [illegible] this thing together.

DR. PAYNE: What are you talking about?

MR. CRESWELL: I am sorry. Let me go back a little bit, for the record. When I asked him if he had ever seen this document before, I am referring to the original one that was introduced -- not the Black Thesis -- the one that Dr. Davis said was handed to him. When I asked him if he had seen it back on the eighteenth, we are referring to this, not the Black Thesis -- the first piece of evidence that was issued and put into the record.

Now, when you saw this on the eighteenth, you say there was a young lady, Miss Lois Poe, who was writing this?

MR. JONES: Yes.

DR. SAWYER: Could I just ask a question? You are still referring to this, and you are associating the name Lois Poe with this?

MR. JONES: Yes, I am.

DR. SAWYER: I just wanted to be sure.

MR. CRESWELL: Again for the record, if I refer to a document and I don't identify it, I am referring to the one that was first introduced in evidence, since it does not have a title or anything. When I refer to the Black Thesis, I will refer to that by name.

You said the circumstances were that she was writing [illegible] this?

MR. JONES: Yes.

MR. CRESWELL: Did you ever have occasion to comment to her about this?

MR. JONES: No, I didn't.

MR. CRESWELL: Did you ever have occasion to comment to me about this?

MR. JONES: No, I didn't.

MR. CRESWELL: Did we ever discuss this particular document?

MR. JONES: No, we haven't.

MR. CRESWELL: I want you to think back. Where was it that you first saw this?

MR. JONES: I am trying to figure out where I was when I was with Lois when she was willing.

MR. CRESWELL: Let me ask you another question that may help you. Do you remember where this was duplicated?

MR. JONES: Yes, I do.

MR. CRESWELL: Where was it duplicated?

MR. JONES: At St. Anselm's Chapel.

MR. CRESWELL: Do you recall my being in St. Anselm's Chapel at a time when this was being run off?

MR. JONES: Yes, I think I do.

MR. CRESWELL: Do you recall that we had any discussion about it?

(fol. 95) MR. JONES: Yes, I think there was some discussion.

MR. CRESWELL: Would you repeat that discussion?

MR. JONES: The discussion was not to put it out at all.

MR. CRESWELL: Was not for who to put it out?

MR. JONES: For anyone.

MR. CRESWELL: How about you in particular?

MR. JONES: For me particularly.

MR. CRESWELL: Had you at this time come to me about your denial of republication?

MR. JONES: Yes, I had.

MR. CRESWELL: Again, this is a question that I have asked you before. Let me back up. Have you ever had more than one of these in your possession?

MR. JONES: Yes.

MR. CRESWELL: Approximately how many?

MR. JONES: Approximately nine or ten.

MR. CRESWELL: Did you ever, after that initial discussion at St. Anselm's, bring me a copy of it?

MR. JONES: No.

MR. CRESWELL: Did you ever bring anyone a copy of it, show it to anyone?

MR. JONES: I wanted to take one to James Mont-
fol. 96 gomery.

MR. CRESWELL: Why?

MR. JONES: To show him what was happening.

MR. CRESWELL: Did you take one to James Montgomery?

MR. JONES: I attempted to.

MR. CRESWELL: Did you ever give one to him?

MR. JONES: No, I didn't.

MR. CRESWELL: Did you ever give one to anybody?

MR. JONES: I might have given -- I gave two out on the way up Jefferson, and those were not to students that went to Tennessee State.

MR. CRESWELL: Why were you going to show it to James Montgomery?

MR. JONES: It seems as if he was trying to help me get back in school, so I was going to try to help him a little bit.

MR. CRESWELL: Help him in which way?

MR. JONES: To let him know what possibly had passed.

MR. CRESWELL: Why did you want James Montgomery to see this? What is his capacity or function so that you thought it was important that he would know about this?

MR. JONES: He is president-elect of the student council.

fol. 97 MR. CRESWELL: When you attempted to give this to Mr. Montgomery, what was his reaction?

MR. JONES: He said, "Don't give me any of that racial material."

MR. CRESWELL: "Don't give me any of that racial material"?

MR. JONES: Yes.

MR. CRESWELL: Were you giving it to him, or did you attempt to give it to him as a means of expressing your own views?

MR. JONES: I gave it to him to inform him.

MR. CRESWELL: Answer my question. Were you

giving it to me as a means of expressing your own views?

MR. JONES. No.

MR. CRESWELL. This is a copy of it. I wish you would pick it up and open it to the second page. You have read it. Is Tennessee A&I State University's name mentioned at all?

MR. JONES. No, it isn't.

MR. CRESWELL. Is your name mentioned at all in there?

MR. JONES. No, it isn't.

MR. CRESWELL. Is that piece of paper signed in any way?

MR. JONES. Yes.

MR. CRESWELL. How is it signed?

MR. JONES. "SNCC".

MR. CRESWELL. With the initials?

MR. JONES. Yes.

MR. CRESWELL. Is that a reference to the Student Non-Violent Coordinating Committee?

MR. JONES. Yes.

MR. CRESWELL. Are you an employee of the Student Non-violent Coordinating Committee?

MR. JONES. No, I am not.

MR. CRESWELL. Are you a member of the Student Non-Violent Coordinating Committee?

MR. JONES. No, I am not.

MR. CRESWELL. Have you been working with them this summer?

MR. JONES. No.

MR. CRESWELL. I don't think I have asked you this before. Do you adhere to the views that are expressed in this mimeographed sheet that is signed by the initials "SNCC" that you have in your hand?

MR. JONES. No.

MR. CRESWELL. You say you wanted to see Mr. Ed on Montgomery's case. Did you want to give anybody else a copy? Were you attempting to give anyone else a copy?

MR. JONES: No, no one.

MR. CRESWELL: Do you recall in any more detail our conversation, what I related to you in reference to this at the back of the chapel when it was being drawn up?

MR. JONES: We were saying that it was, to bring it down to terms, a stupid question. We were all trying to tell Lois that it was very out of sorts.

MR. CRESWELL: Out of sorts?

MR. JONES: Yes. What I mean by that is, it was not something that you would do. If you had planned to do it, it was not something that you would do.

MR. CRESWELL: So you have seen this before?

MR. JONES: Yes, I have.

MR. CRESWELL: You did bring it onto the Tennessee A&I State University campus?

MR. JONES: Yes, I did.

MR. CRESWELL: You brought it on for the purpose of giving to the president-elect of the student body?

MR. JONES: Yes.

MR. CRESWELL: But you were not bringing it on as an espousal of your views?

MR. JONES: No, I wasn't.

MR. CRESWELL: Did you attempt to give copies of [fol. 100] it to the general student body or students who were enrolled in summer school?

MR. JONES: No, I didn't.

MR. CRESWELL: And the notice that you have received was to the effect that you should not; is that correct?

MR. JONES: Yes, that is correct.

MR. CRESWELL: And to the effect that it should not even have been originally written; is that correct?

MR. JONES: Yes.

MR. CRESWELL: Approximately how many copies of this did you ever have at one time?

MR. JONES: No more than fifteen.

MR. CRESWELL: Did you see President Davis at this time?

MR. JONES: Yes, while I was on campus. I was talking to a student and we were talking about my sister's marching that day.

MR. CRESWELL: Did you attempt to give him a copy of this either for his information or for any other purpose?

MR. JONES: No, I didn't.

MR. HEDGEPATH: May I ask you a question?

MR. CRESWELL: Go right ahead.

MR. HEDGEPATH: Mr. Jones, you were in this lady's presence when she wrote this document, weren't you?

MR. JONES: Yes, I guess so.

MR. CRESWELL: Do you remember when she wrote it, or when she was duplicating it?

MR. HEDGEPATH: I am asking about her writing of it.

MR. JONES: In both.

MR. HEDGEPATH: Then you were at the chapel when it was duplicated?

MR. JONES: No, I was out of the room when it was duplicated. I was down in Attorney Creswell's office with another student that was in this same trouble. We were talking about it. Wait a minute, how was that? I went to Attorney Creswell's office. Then we came back to the chapel.

MR. HEDGEPATH: Who is this?

MR. JONES: Me and Wallace Hedgepath. I can't think of this other boy's name. His name is Eddie, Maybe I must call your have been mistaken in mentioning your lawyer. Mr. Creswell, he didn't come down to the chapel with us. There was no discussion of this document until we came back to the chapel.

MR. HEDGEPATH: Have you ever discussed this document with your lawyer?

MR. JONES: I talked to Attorney Creswell a little about this document.

MR. HEDGEPATH: Have you ever discussed this document with your lawyer?

MR. JONES: I can't clarify what I said.

MR. CRESWELL: Answer his question.

MR. ROBERTS: I wonder if he would object to answering the question without looking to his attorney for indication of how he ought to answer?

MR. CRESWELL: Just answer it Yes or No.

MR. JONES: Yes, I had a discussion with him about this document.

MR. HEDGEPATH: Inasmuch as you were with Lois when she was writing it, why didn't you distribute it?

MR. JONES: I didn't believe in it. It was something that I wouldn't do. Why would I pass out something I wouldn't do?

MR. HEDGEPATH: I don't know. Let me ask you this, Mr. Jones. You don't mean to say to this committee that this business of this document is any surprise to you, do you?

MR. JONES: No, it is not a surprise.

MR. HEDGEPATH: You knew all about it this summer, didn't you?

MR. JONES: I knew about it at a date this summer. [fol. 103] MR. HEDGEPATH: The fact that we have produced this document today has not come as a shock to you?

MR. JONES: Yes, it has.

MR. CRESWELL: I don't know that that is really relevant. He knew about the document. He has admitted that he has seen the document. The fact that he knew about the document and was aware of its existence does not mean that you are excused from giving any notice.

I think that's what you are trying to get to. It would be very surprising to him if you asked him about the Eiffel Tower or the Empire State Building. We all know about those. It wasn't listed on your original complaint, only upon the late specification of charges.

MR. HEDGEPATH: Is this, Mr. Jones, the Black Thesis which you admitted you distributed?

MR. JONES: Yes.

MR. HEDGEPATH: We would like to introduce that in the record.

MR. CRESWELL: The Black Thesis is not part of anything he is accused of distributing, and I don't think it is relevant.

MR. HEDGEPATH: Your client admitted that he distributed that as his defense.

MR. CRESWELL: Not as a defense; he admitted he distributed—

[fol. 104] MR. HEDGEPATH: He admitted that that is what he was distributing, rather than the other thing. Would that be all right?

MR. CRESWELL: My objection is noted to that, if the Chairman please.

DR. PAYNE: Yes.

DR. PAYNE: Is there anything further in this regard?

DR. CONLEY: One question, if the Chairman please. This sheet here, Mr. Jones: You indicated that you testified that you are familiar with it. What school in your opinion at that time did it refer to?

MR. JONES: I think it could

DR. CONLEY: I don't mean what it could be.

MR. JONES: What school?

DR. CONLEY: In your opinion.

MR. JONES: That day we were talking about Howard University.

DR. CONLEY: This pertains to Howard University here?

MR. JONES: No. What I am saying

MR. CRESWELL: Answer the question.

MR. JONES: I don't know what she thinks about it could pertain to Tennessee State.

[fol. 105] MR. CRESWELL: In your opinion.

MR. JONES: In my opinion it pertains to Tennessee State.

DR. CONLEY: And you brought it to Tennessee State campus? Is that right, sir?

MR. JONES: Yes, sir, I did.

DR. CONLEY: Thank you.

DR. PAYNE: Any further questions? Dr. Sawyer

DR. SAWYER: Did you have prior information that this document would be prepared at the time that it was prepared?

MR. JONES: No.

DR. SAWYER: How did you happen to be on the scene at the time?

MR. JONES: I am at this place every day.

MR. CRESWELL: This place refers to—

DR. SAWYER: This place?

MR. JONES: I was working in the Liberation School, and that is where we had our meetings and we had our school.

DR. SAWYER: Who else was in the immediate proximity where this was prepared, where it was written?

MR. JONES: I don't understand what you mean by that.

MR. CRESWELL: Who was in the room when this [fol. 106] was run off, if you can remember who was there?

DR. SAWYER: Not run off; prepared.

MR. JONES: There was Lois Pope. There was Larry Brown. There was Wallace Dooley. There was Nancy Woodruff. Myself. There was—I think, Eileen Carpenter. I am not sure. I think that's about it.

MR. CRESWELL: Since we are informal, let me ask you, Kenneth, since it pertains directly to that question. How many people of those that you have named were involved with or concerned with participating in either the writing or the preparation of this document, to your knowledge?

MR. JONES: Just Wallace Dooley and Lois Pope—

DR. SAWYER: You are anticipating my question. What was the contribution of the other people there?

MR. JONES: Nothing. We were reading—probably reading books. We were in general conversation.

DR. SAWYER: There was no contribution or participation of the other people in this?

MR. JONES: No.

DR. SAWYER: Only the two people that you named?

MR. JONES: Right.

DR. SAWYER: This is the product of their thinking, their composition, and you and the others remained apart.

though you were in the same room? You made no contribution to it?

[fol. 107] MR. JONES: You are right.

DR. PAYNE: Is there anything further?

MR. ROBERTS: May I ask just one question? I understood you at the beginning to say that you couldn't recall just where you were with Miss Lois Poe and the others when this statement was prepared, what room you were in, or anything. Now your answer this faculty advisor's question as to why you were there, that you were there just about every day.

MR. CRESWELL: Do you want to refer back to the record to see exactly what he said? I think we can do that.

MR. ROBERTS: I will just withdraw the question, since the record will speak for itself.

DR. PAYNE: Are there any further questions? Is there anything further.

DR. MURRELL: Mr. Chairman, I have a question I would like to ask. Mr. Jones, on two occasions I instructed you to treat the campus as being off-limits. On three occasions afterward I recall you being present, and at one time I identified you as carrying books; you said for the purpose of tutoring students.

Can you elaborate on that, why you failed to heed to that request?

MR. CRESWELL: I imagine Mr. Jones could elaborate on that, but I am going to advise him not to elaborate on it because it is not anywhere in here stated in the [fol. 108] charges he came back on the campus when he was not supposed to be, even as an aid charge or a new one.

We can continue to bring up various little things. We can drag this on all afternoon. I strongly object to bringing this up, and then maybe we will have to bring another witness in and something else.

So I will just advise him not to answer that. It is not in the charges anyway.

DR. PAYNE: Is there anything further? If not I will declare this hearing adjourned.

IN THE MATTER OF

THE FACULTY ADVISORY COMMITTEE OF TENNESSEE A & I STATE UNIVERSITY

AND

FREDERICK BROOKS

September 20, 1967, 1:30 P. M.

* * * *

[fol. 10] Mr. Creswell: "Well, I would just like for the record to show at this time, then, that we strongly object to the fact that members who are sitting as judges, in that they determine the rules of this hearing, and who sit as [fol. 11] jury in that they are the arbitors of fact, will also be sitting as prosecuting witnesses. I realize that this is not a court proceeding, but I also would hope that the university is recognizing certain fundamental rights that people have, and one of those, I suppose, is not to be judged by those who are accusing him, too, so we would strongly object to any member of the committee, any person who is going to sit in judgment here, to offer testimony against Mr. Brooks."

Mr. Hedgepath: "We would respond as follows. It would appear to us that Mr. Creswell desires to have this entire committee step aside, because I daresay that there is not a person on this committee who couldn't testify against Mr. Frederick Brooks. Now, our position is this. This committee cannot possibly close its eyes to what it knows. We are not going to do that in your presence, Mr. Creswell, and we don't think you ought to expect that of us. If the President, and I repeat, if the President of this University has been subjected to ridicule by your client, then that is your client's doing, not the President's. We cannot disrupt the procedure long followed in this school because it develops that a student makes his remarks against those who sit in judgment of students. This is not a courtroom. This is not a formal [fol. 12] proceedings. This record will show, as others will, that a very fair and a very lengthy hearing has been held in every case. This record will show that many witnesses have been heard on this case, and the uni-

versity can simply not allow its president to step aside in this determinations because he happens to know something about the charges which are brought. We believe that the president and every member of this committee has at their hearts the student that you represent. We believe that all the students of this university are thought of much more dearly by this committee than by some, and for that reason it is the purpose of this committee, and their function, to review the actions of the students here at the end of the year and before the next year begins to determine whether or not, in their judgment, a few students should be at this school.

"Now, this is not a court of law, this is not a formal proceeding. We have not tried to let it be that at all, and so we insist that this committee is competent, as is the president of this school, to pass judgment upon your client in spite of the fact that some of the testimony will be gleaned from them."

Mr. Creswell: "We don't want to get into a long and drawn out debate on this matter. The feeling is that I am sure the members of the committee will try to act [fol. 13] as impartially as they can; however, if some of them feel rightly or wrongly that they have been assaulted by some of our clients, I submit that this almost has to, as a matter of fact, color the judgment. I am sure in this university there are other members of the faculty who are equally as intelligent as those who are sitting before us, who are not directly and personally involved and that they would be in a much better position to make a purely objective evaluation of the evidence presented before them."

Mr. Roberts: "I think, Mr. Creswell, that you would agree, though, that the person who saw the conduct of the students concerned, knows more about what he saw than some third party."

Mr. Creswell: "I am sure that this is the case, and if these members feel that they are the only people who can offer adequate testimony of proof, that they might step down from sitting in judgment of their own testimony, and let others sit in their place, but I want to make this suggestion. I want it in the record. I have heard the answer, and I guess we can proceed from here."

• • • •

EXHIBIT 5

Case No. 4887
Filed Oct. 16, 1967, G. U. C. D. C.

BLACK THESIS

[EMBLEM]

The Nashville Student Summer Project will this summer direct its attention to Black People in the Nashville community. The conditions in which we find ourselves are much like, if not identical to the conditions of Black People, people from Watts to Halen, from the south side of Chicago to the Mississippi Delta. It is not coincidental that we, as Black People are poor; have no jobs, a poor education, inadequate housing, and are the last hired and first fired.

Here in Nashville we face a serious housing problem. They live in condemned buildings with no running water and railroad tacks that are still in use for our back yard. What is the city doing to help alleviate this problem? NOTHING! The hardest fact, however, is that they will continue to do nothing until we force the MAN, by any means necessary, to give us what is ours.

The North Nashville Students will attempt to aid the neighborhood people, so that we may form an effective unit in which to move.

Students are now working in the black community, talking to people, setting up meetings, and just attempting to determine the next step. The only hindrance is numbers. If you desire to work, contact North Nashville Student Summer Project, Mr. Lelano B. Farrar, St. Anselm's Chapel, 2008 Meharry Blvd., 244-2744.

During the past week the members or the Black community of Newark, New Jersey expressed very vividly the fact that they have been pushed far enough. The governor of New Jersey, Richard Hughes Addonigio, blamed the riots on a group of people "who hate America." Among these people who supposedly "hate America" was a three year old girl who was shot in the eye by a policeman's bullet while looking out of the window of

her home. Another vicious rioter was a ten year old boy who was shot and killed by police while riding in a car with his parents.

When these Black People could no longer be controlled by local police the president of the United States offered New Jersey federal troops to aid the Newark authorities in their reign of terror. The National Guard was sent in to patrol the Black community and make sure the violence did not spread into the near-by white communities. When the residents of the Black community refused to be frightened by these white men with guns, they work up Sunday morning to find that they had been fenced in with barbed wire. This same technique was used to eliminate the Jewish problem in the ghettos of Germany and Poland. The Germans found it very easy to murder millions of Jews once they had been enclosed by wire and guarded by soldiers with machine guns. Is this the plan the white man has in mind for the Black man in America? It seems logical to conclude this, if a person stops to closely examine the need for barbed wire, machine guns and tanks to be used against three year old girls and ten year old boys.

On Sunday, July 16, 1967, on Face the Nation, a white panelist appealed to Roy Wilkins, head of the NAACP, to exert his influence to rid the members of Black community of all weapons. He asked a question that surfacely appeared quite naive—"Why should members of this (the Black) community need guns when they have persons (the police) hired to protect them?" These of course are the same police who shot the children and yet this man had the nerve to ask his question.

There seems to be a very definite plan in the white Americans mind to solve the "Black Problem". Let's try to follow the white man's thinking for a moment. A vicious, racist war is being fought in Vietnam, a country far removed physically from Newark, New Jersey. The white man feels this would be an excellent opportunity to kill off a large number of young Black men (which in turn will leave old Black people, young Black children and Black women defenseless in the ghettos of America). Many Black men found this out and everyday are saying

they would rather go to jail than kill people they do not know. When the white man found that part of his plan was not going to be as effective as he wished, his tactics had to become more obvious. Now we are able to understand why he has to use the police dogs, the machine guns, the tanks, the rifles, and the barbed wire because the Black man is finding out his plans and fighting against it. And that is essentially why the members of the Black community need guns.

If *you* are Black and poor in this country *you* had better begin to take a closer look at *your* surroundings. *You* had better become aware what's being done to eliminate *you* and you had better ask yourself *How Long Before The Barbed Wire?*

LIBERATION SCHOOL

For the last seven weeks, on Monday, Wednesdays, and Fridays, children in the North Nashville area have been piling into station wagons and old sedans to attend a very special type of school; a school in which the children are taught about *themselves.*

The primary purpose of the Liberation School is to acquaint children with their heritage, their history, their music, their art, their place as Black People in a world which is white; to give children self-direction and reasons for being proud of being themselves.

The focal point of the curriculum is Black History, a subject that has been systematically deleted from public school curriculums. One must know from whence know the contributions made by our people to western civilization and to societies perhaps far greater in order to envision our true place in society.

Other subjects taught in the Liberation School include mathematics and Literature. Going on the promise that mathematical principles form the basis of logic and logical thinking, there is an attempt being made to introduce math in a revoluntary manner which will help enlighten students to world in which we live.

In literature classes, the students are being introduced to the Black authors and playwrights, past and contempo-

rary. This subject has been introduced not only to satisfy the aesthetic senses, but to acquaint pupils with the wonderful world of ideas. The students will be encouraged to start placing their idea on paper, with hopes of publishing a booklet of the students' works at the end of the summer.

Liberation school has been established to enable children and teenagers to get to know themselves better. Our childrem must be made to realize that Black, too, is beautiful and that it is beautiful to be Black.

DEVELOPING PRIDE AND CONFIDENCE THROUGH ACHIEVEMENTS IN MATHEMATICS

One of the surest ways to develop pride and confidence in any person is to have him or her succeed at something. In the final analysis this may be essentially, the only way.

In this regard mathematics offers a gigantic opportunity and at the same time an awesome challenge. For what more gratifying feeling can a youth achieve than that which comes from succeeding at something which he formerly considered beyond his ability or which has been led to believe was reserved only for people with exceptional ability.

One evening last spring the son of a neighbor came to ask me to check some homework which he had done for his arithmetic class. After checking the work and finding all problems solved correctly I then deliberately led the youth in to a discussion of his attitudes concerning school in general and mathematics in particular. From certain things he said I became impressed with the interest his parents took in his work and I began to say things of encouragement also. I decided to encourage him far beyond what I then considered to be his native ability and we talked on excitedly about the possibilities and opportunities which an understanding of mathematics might provide. Finally we discussed the possibility of my providing him with some guidance during the summer in those areas of arithmetic in which

he found himself weak and also to expose him to some new and exciting ideas in mathematics which he knew nothing about. His parents took warmly to the idea and eventually told other neighbors of the idea. Other students came to ask if they could be included in what was by now beginning to be a miniature summer project.

My biggest problem was to continue re-enforcing the excitement and commitment which the young brought. In trying to think about this problem one thing kept sticking in my mind; an article which I read in "*Scientific America*" some years ago. The article was titled "Ashongo". It dealt with a people who lived 1000 years ago in that area of the world now known as the Congo. According to the article researchers had found evidence that those people (from the heart of Africa) had discovered prime numbers and may have even sought formulas to generate (a problem not solved even until today). These researchers found that many of the ideas which we now consider to be a part of modern mathematics may have been discussed by the people of Ashongo. At this time I was just beginning to learn that the claims (both implicit and explicit) that Black men had never contributed significantly to science and mathematics and that they had never been a part of the main stream of history were deliberate lies. The article gave me special kind of pride and motivation which I felt could be helpful if I could only find a way to communicate it to those students who would look to me for inspiration during the coming summer. I finally settled on the idea of bringing pictures (which I ordered from a popular magazine) and books containing interesting stories about famous Black Heroes to be discussed leisurely after each meeting.

By the end of the first week the number had swelled from seven to fifteen and I had to divide them into two groups because of the difference in of exposure and past achievement. I began always with something which each student in the group could succeed at then proceeded slowly to more difficult but closely related topics. This success plus the stimulating discussions we held at the end seemed to bring them excitedly back the next day.

I would hlpe that this idea could be expanded upon; that Blacks who have academic skills and who care what happens to their Black Brothers and Sisters of this and the coming generation would begin to ask what they can do to help!

Certainly mathematics presents a great opportunity in this regard, but so does the area in which you possess skills.

HOW I LIVE AND WHAT I AM TRYING TO DO TO CHANGE IT

I am an active member of a summer project consisting of young men and women working for and with the Negro in this and other predominantly Negro communities and as I am a dedicated member of this fine organization I am working tirelessly to improve myself as well as the people in my neighborhood.

By helping my neighbors, I mean, I am trying to have more recreation facilities for the children in my community, perhaps this and many others.

Many needed things can be accomplished by all of my neighbors by joining with me to form some type of community club. In this club everyone can voice his or her opinion, about the housing and how they can improve it. Not only in my community but in all Negro communities.

All of the many things needed to be done in nearly all of the Negro communities can only be sustained through the efforts of each Negro involved and the help of this fine organization.

—Alice Hunter

SURPASSING BEAUTY

Counting, counting counting the people who want to be
who are afraid to be what they are.

We endure all manner of human degradation and we
call this beauty, because we thing that they will
call this our beauty.

No idea of beauty; no imitate. No eye for beauty; we hide; no iniative; we conform.

Sitting in that chair, standing over that fire, burning my hands, scarring my face, scorching my beauty, trapping it, hiding it;

Negating my own feminine humanity, all for a white woman's crown—a pseudo crown for me.

And I heap insult after insult upon myself as I try to change my identity.

As a lowly animal who is incapable of perceiving his own worth I try to become someone else—of another world, of another heritage, of another being.

And I joyfully destroy my womanly beauties

Only to run in the mist, and to discover with horror that I cannot change my form.

Only to know the passing of time, and to realize that TIME will not let me hide my elegance under another woman's crown.

Only to walk in the hot, summer sun and find myself crying out under if fiety glaze: "Let me be Black."

Freed in the realization of my own beauty; freed in the gaze of my proud black brothers whose eyes reflect my loveliness.

And when I hurled her crown in their faces, I was free to become a human being. A woman, freed.

And those, always, are my locks; the curls which shall corwn my head in glory; the softness which frames my face—

The unlocked beauty of my naturalness

EXHIBIT 6

Case No. 4887
Filed Oct. 16, 1967, G. U. C. D. C.

In the early years of the civil rights movement in America, college students in Nashville's black universities were in the forefront of the struggle. Today, a new vanguard has formed and once again, students at Tennessee State University are called to the helm.

The great white fathers downtown have given the ultimatum to the administrators of this school. They've begun the conspiracy to seize total control of the puppet administrators and the entire student body. For their own security, and in the vested interest of the MAN, the Juda administration has sold out the student body by directing the following atrocities against us:

1. Students whose names appeared in the Nashville rags—namely the Banner and the Tennessean—in connection with the April "disturbances" have been dismissed from this university without prewarning of their dismissal, and without the opportunity to appear before the student senate to hear the charges brought against them, and to appeal their cases.

COMMENT: If the puppets want to adopt the uncivilized tactics used by the MAN, we must move to correct these erronously acting, educated TOMS.

2. Legislation has been taken to decrease the number of out-of-state students by increasing out-of-state fees, and adopting rigid academic standards.

COMMENT: The puppet fools have taken this action to remove academic freedom, and student dissent from university life. Thus they secure their own shaky jobs, and their positions in the circus of white man's society. These people are too blind to see that the MAN initiated these moves so that he may "morally" proceed to infiltrate our black university with his teachers and students who are

more adept in perpetuating his culture than the puppets who are already here.

3. Non-city students have been required to move on campus with an increase in domitory fees.

COMMENT: Thus the campus will become a concentration camp controlled and contained by the legislation of the *racist dogs* downtown, the acts of the *puppet administrators*, the billy clubs and guns of *Nashville's racist cops*, and ultimately the gestapo tactics of the *honorable national guard*, whose pale faces have already been seen in Memphis, Nashville, Chattanooga.

No longer can we as intelligent human beings allow others to make a charade of democratic principle by submitting to the tyranny of a dictatorial administration. Let it be resolved that . . .

1. We as students of this university will not allow ourselves to be herded into concentration camps disguised as the "university campus".

2. We, as intelligent black students, will not be guarded by trembling, powerless idiots who call themselves administrators.

3. We, as black human beings will not be recorded in the pages of history as an ununified race of people, exterminated by the guns of submission and hate.

A generation of inactivity has given today's black students of responsibility of informing and uniting our fellow classmates so that we can fight to remove the injustices directed against us as black people.

CAST YOUR VOTE FOR *STUDENT POWER!!!* BOYCOTT REGISTRATION SEPTEMBER 23 AND FOR AS LONG AS THE PUPPET ADMINISTRATION REFUSES TO ACKNOWLEDGE THAT THIS IS *OUR* UNIVERSITY!

SNCC

EXHIBIT No. 29

STUDENT HANDBOOK

concerning

STUDENT

AFFAIRS,

CONDUCT

and

DISCIPLINE

1966

1967

TENNESSEE A. & I. STATE UNIVERSITY

NASHVILLE

(ASC 4441
Filed: Oct. 16, 196
D. V. C. F.

THE STUDENT HANDBOOK

Concerning

STUDENT AFFAIRS, CONDUCT AND DISCIPLINE

At

Tennessee Agricultural and Industrial State University

Nashville, Tennessee

1966-1967

NAME_____

ADDRESS_____

TELEPHONE_____

SCHOOL_____ CLASS_____

FOREWORD

The Student Handbook is a means of facilitating communication among the members of the University. The materials for this handbook have been created and developed over a period of more than fifty years by students, faculty and staff members, various University organizations, and committees.

The Student Handbook should serve as a source of necessary and useful information which will help the student understand his privileges, rights and responsibilities pertaining to student affairs. It is expected to contribute significantly to the continued high level of cooperative and constructive relationships between students and the various departments of the University. Such relationships help develop positive responsible leadership and citizenship, deepen loyalty and generate high morale.

Supplements and revisions will be issued from the office of the Dean of Students as the need is revealed.

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HISTORICAL STATEMENT

The State Normal Schools of Tennessee were established by an act of the General Assembly of 1909. The Act is popularly known as the General Education Bill, and included appropriations for all public school agencies of the State.

The Agricultural and Industrial State Normal School at Nashville opened June 19, 1912. In 1922, the institution was raised to the status of a four-year state teachers' college and empowered to grant the bachelor's degree. The first degrees were granted in June 1924.

In 1941 the General Assembly authorized the State Board of Education to establish a program of studies in Elementary, Secondary, and Vocational Education leading to the master's degree. The first graduate degree was granted in June, 1944.

In 1951 by Legislative enactment the institution was raised to University status to include the schools of Arts and Sciences, Education, Engineering, and the Graduate School. In the Graduate School the student may qualify for the degree of Master of Arts, Master of Science or Master of Education.

The University is supported from State and Federal funds, the latter in accordance with the Morrill and other Acts that provided support for Land Grant Institutions in the several states.

THE UNIVERSITY CAMPUS

The Tennessee Agricultural and Industrial State University is located in the northwest part of the historic city of Nashville, Tennessee, at 35th Avenue and Centennial Boulevard. It is easily reached from the business district by Jefferson Street bus or College Hill bus. The following means of transportation connect Nashville with the South, Midwest, and other points: Louisville and Nashville Railroad; Greyhound and Trailways Bus Lines; American, Eastern, Ozark, and Southeast Airlines, and Braniff International Airways.

Nashville, the "Athens of the South", offers unusual cultural advantages because of the colleges, universities, and civic organizations which sponsor varied programs such as concerts, lectures, and dramatic productions. Sections of the city and environs are of remarkable scenic beauty. The Tennessee Valley Authority projects and proposed Cumberland development are of considerable social and economic significance.

The University campus consists of 470 acres. Among the major buildings are the Administration Building; Harned Hall of Science; Women's Building, which houses the Jane E. Elliott Cafeteria; Industrial Arts Building; East, Hale, Hankal, Wilson, Clement, and Veterans Residence Halls; Men's Residence; Watson Hall and Women's Residence Centers; Chemistry Building; Goodwill Manor, the President's Residence; Recreation Hall; Martha M. Brown Memorial Library; Student Health Center; Lawson Hall and other Agricultural Buildings; Jim Nance McCord and other Engineering Buildings; Kean Hall; the Frank A. Young Poultry Plant; the William J. Hale Field House and Stadium, the Alumni Building, R. E. Clay Building, and Student Union.

TRADITIONS AND TRADITIONAL EVENTS

Loyalty develops around traditions, and yet traditions are something of an expression of loyalty. Which comes first—which begets which—is inconsequential. It is sufficient to recognize the interplay or interrelationship.

While some traditions fade away, others come into being. Thus it is that each generation of students has the privilege and obligation of preserving or not preserving, and of adding to traditions according to its interpretation of what is significant in its heritage and of what is essential as its contribution to the heritage.

It is with pride that the following traditions and traditional events are here set forth.

Traditions

The University colors, adopted many years ago by the students are *Royal Blue* and *White.*

The Seal of the University is one of the most cherished traditions. It is affixed to diplomas and other documents. It has a place of honor at the entrance to the library bearing ensigns representing our dedication to growth, construction and learning with a hand holding light above all and the motto *"Think, Work, Serve".* It deserves respect at all times and is not to be walked upon.

"Enter to Learn, Go Forth to Serve", is inscribed over the proscenium arch of the Administration Building Auditorium used most frequently for assemblies and convocations.

Alumni Chimes, a Maas Carillon, installed in the Administration Building cupola, are played at regular intervals during the 24-hour day. They were purchased by the National Alumni Association, and formally presented to the University in 1950 "as a memorial to those passed, an inspiration to present and future students, an

honor to Mrs. Martha Brown, Mrs. Jane Elliott and Mr. R. E. Clay, and in appreciation for the leadership of President W. S. Davis."

Freshmen are inducted into the University in the formal *Freshman Induction Ceremony* at the opening convocation for the new school year.

It is a memorable and respected tradition of the Alumni Association to induct the candidates for degrees into the association in the *Alumni Induction Ceremony* held during the Commencement Seasons.

Many a college woman and her date, as well as others seeking a quiet place in which to meditate, sit on the stone ledges among the azaleas along the east entrance to Memorial Library in what is known as *Azalea Court.*

Over the years, the *R. E. Clay Sunday School* has provided a source of basic religious education and inspired high standards of moral conduct.

All other campus activities cease for the spirit-lifting mediations of *Quiet Hour* each Wednesday evening at half after six.

Academic

Traditional Events

The University has always been proud of the outstanding scholars among its graduates. Ten national honor societies at the University maintain this tradition. One of these national honor societies, Alpha Kappa Mu, was founded on this campus. Students who have attained high scholastic records are graduated *"With Distinction" or "With High Distinction".* At Commencement Exercises these students are identified by the *Honor* (gold) *Cords* which are worn as a part of their academic attire.

On *Awards Day* students who have excelled are presented awards and honors during a convocation. Record of these awards and honors appears in the Spring Commencement Program.

Juniors who rank highest in the University on the basis of academic achievement and who also meet the highest standards of moral and ethical living are screened during the Spring Quarter and declared eligible for election to *The Senates.* The 20 men receiving the highest number of votes in the Senatorial Elections become the Men's Senate, and the 20 women receiving the highest number of votes become the Women's Senate the following Fall Quarter.

Citizenship

White Sunday

"White Sunday," the first Sunday in May, is the one Sunday of the year when women of the University are urged to dress in white (all white) as a symbol of their unanimity of purpose in building for themselves wholesome, full, and creative lives. It is sponsored by the Women's Advisory Board.

Women's Day

"Women's Day," a day designated during the first week in May, is sponsored by the Women's Advisory Board to focus attention upon the contributions of women and to emphasize the importance of the role of women in the forward movement of civilization.

Charitable giving, expressed through the annual *Student Benevolence Drive,* is a facet of good citizenship which every University student is urged to cultivate.

High spirit is much in evidence at the University in the Spring *Nomination Convention* when the President and Vice-President of the Student Council and "Miss Tennessee State" are elected. The election is campus-wide and students are intensely interested. Campaigning sessions entail parades, stump speaking, sign-posting, as well as an all-campus political rally.

Student-sponsored *Thanksgiving Sunrise Service* ushers in the Thanksgiving Season.

Religious Emphasis Week augments the opportunity for counsel and guidance in acquiring moral and spiritual values with dynamic religious leaders of all faiths and all walks of life serving as resource persons.

Social and Athletic

Freshmen are entertained during orientation week at a *Get Acquainted Party.*

One of the most delightful informal all-campus activities is the *Fourth of July Picnic* which until 1958 was held in nearby picnic areas and is now held on campus in the vicinity of the University Walking Horse Stables.

A symbol of the football rivalry between Tennessee A. and I. State University and Kentucky State College, the *"Little Brown Jug"* is given each year to the winning team. The name of the winner is inscribed on the jug in a ladder arrangement.

Cheering the athletic teams of Tennessee A. and I. State University with songs and yells is a tradition as old as the school.

The annual *Junior-Senior Prom*, given by the Juniors traditionally complimenting the Seniors, and the *Senior Picnic*, which seniors give themselves, are late spring activities. The *President's Reception for Seniors*, held in the President's home honoring seniors and their parents and the *Senior and Graduate Student Buffet Supper*, where graduates present and entertain their families, are held during the Commencement Season.

Parade, bonfire, pep rally, and "open house", are all parts of the traditional *Homecoming Celebration*. The *Homecoming Football Game* is a main feature. The climax of the celebration is the all-school *Homecoming Dance* sponsored by the University.

The University's four sororities and four fraternities entertain freshmen and new students with *Rush Parties* and *Smokers* respectively during the Fall and Winter Quarters.

At the end of the sorority and fraternity probation week, the newly initiated members meet in a scheduled gathering on North Campus, receive congratulations, and sing on *"Coming Off Night"*. The next day, *Greek Sunday*, the neophytes entertain the student body

with their various sorority and fraternity songs in the University Auditorium. During the spring, sororities and fraternities annually join in giving the *Greek Dance*. Other traditional Greek-sponsored events are the *Kappa Kostume Karnival, Delta Kiddie Party, Omega Mardi Gras Dance, Alpha Sweetheart Day,* and *AKA Station Project.*

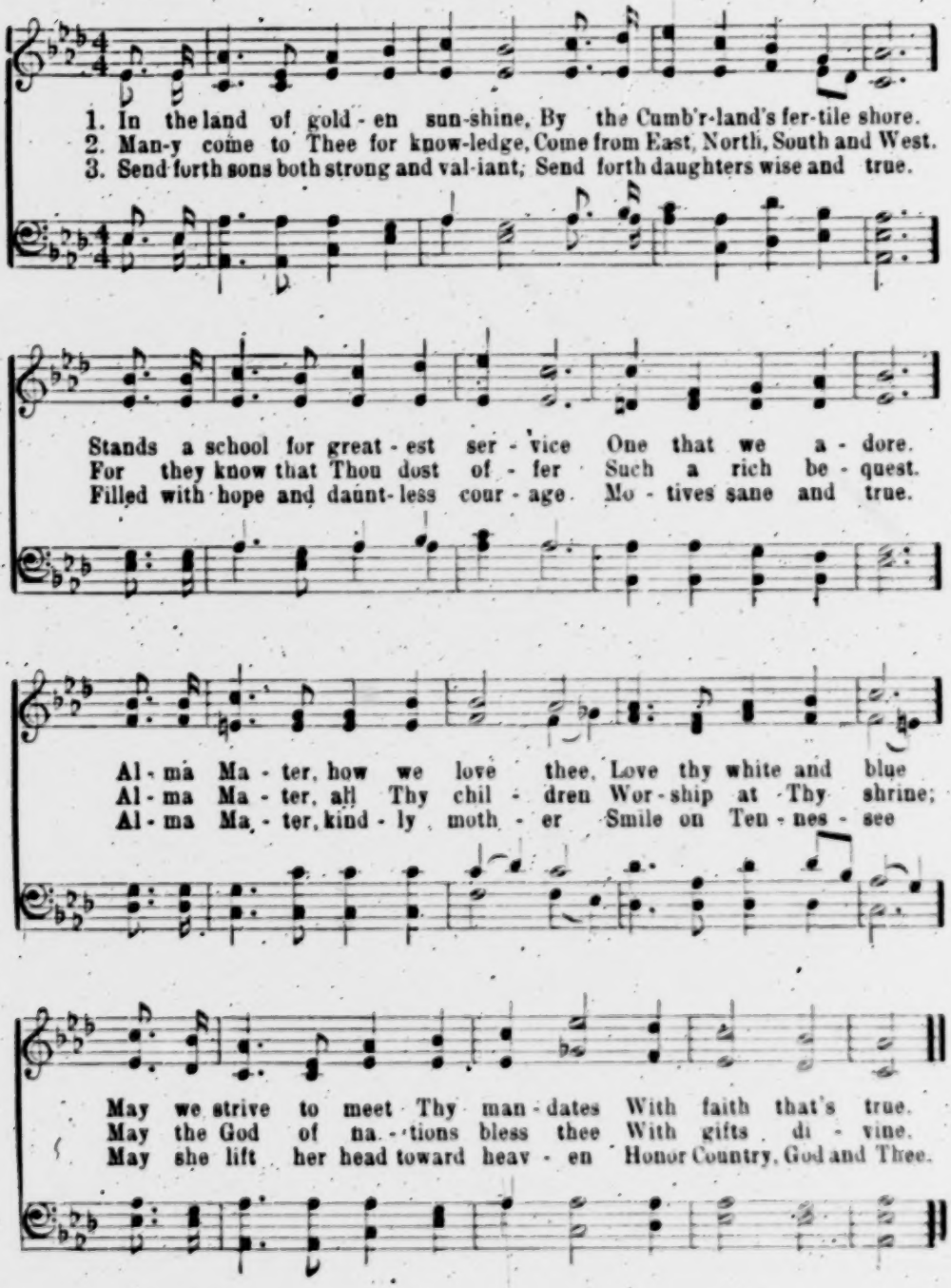
The *Inaugural-Coronation Ball* follows the inauguration of the Student Council President and Vice President and climaxes the colorful coronation of "Miss Tennessee State".

The *"Miss Charm-Mr. Esquire"* Contest selects from the eligibles on the campus the young woman and the young man who exemplify the highest qualities of fine womanhood and manhood. The *"Miss Charm Mr. Esquire Ball"* follows the contest and opens the spring social season.

As the climax to AFROTC Week, the annual *Military Ball* given by Cadets of AFROTC Detachment 790 is considered by many the most formal of campus formal dances. Military protocol is adhered to strictly. "Miss AFROTC" and her attendants, as well as Cadet Officers are presented during the evening.

Alma Mater

L. M. Averitte

Clarence Hayden Wilson

CONDUCT

Manners are of more importance than laws
Upon them, in a great measure, the laws depend.
The law touches us but here and there and now,
and then. Manners are what vex or soothe, corrupt
or purify, exalt or debase, barbarize or refine us,
by a constant, steady, uniform, insensible operation
like that of the air we breathe in."

EDMUND BURKE: Letters on a Regicide
Peace 1, 1797

The way you look and sound, the places you go, the things you do, what you say and the language you use, are of great social significance; that is the actions of Tennessee State students largely determine the respect and confidence which people give the University. You then, as a college student, are in a position of social responsibility. Your attitude toward this responsibility is a clear reflection of your attitude toward yourself and all of your affiliations, as well as toward your home and the University. Your conduct, at all times, reveals your maturity, sense of responsibility and moral standards.

It is expected that students live up to the highest ideals of womanhood and manhood. It is also expected that every student will be diligent in study, prompt and regular in attendance at classes, assemblies, Sunday School, Quiet Hour, Sunday Morning Worship, and other public services, convocations and programs.

CRITERIA FOR COMPETENCE IN LIVING AT THE UNIVERSITY

Intellectual aspirations as evidenced in scholarship, a genuine desire to discover and reveal the whole truth, curiosity, and the drive that carries one beyond course requirements, use of the scientific approach in work and thinking, effective study skills and habits, and creative performance.

Cultural orientation as evidenced in the use of leisure time in the arts, such as music, concerts, writing, dramatics, painting; athletics and sports; other student activities, such as management, forensics, publications, or social activities; social service and church work; hobbies.

Practical sufficiency as evidenced in ability to handle personal or group financial problems; ability to obtain and keep a job, if needed; environmental adjustment in the college and community; effective distribution of time.

Physical fitness as evidenced in health habits and participation in suitable sports.

Emotional balance as evidenced in general factors such as self-control, self-confidence, courage, sense of humor, independence; family relationships; adjustment with other students; religious comprehension.

Social fitness as evidenced in ability to keep friends, to respect others, poise and manner, social accomplishments, taste in dress, grooming.

Sensitivity to social problems as evidenced in concern about campus issues; awareness of contemporary social, economic, and political problems and opinions; ability to criticize intelligently; willingness to assume responsibility of citizenship, to maintain rules and regulations governing university life; and to make personal sacrifices.

Character traits as evidenced in such attributes as honesty and integrity, temperance, responsibility and initiative.

Philosophy of life, or personal pattern of goals as evidenced in vocational planning, reasons for attending college, religious attitudes, tolerance, ethical standards and ideals.

DRESS

What to Wear—Where

Type of Occasion	*Female*	*Male*
Classes	Casual clothes; mostly sweaters, skirts, blouses, simple dresses and suits, Flat and/or medium low heels exclusively. Socks or stockings. ••	Casual clothes: slacks, sport shirts, jackets, sweaters; suits, shirts and ties if desired.
Dinner	Freshen up the costume you are wearing or change to a little more dressy dress and hose. ••	Freshen up, wear a tie and coat
Sportswear Occasions Gymnasium Residence Halls	Slacks, jeans and shorts may be worn only on North campus (excluding the Cafeteria and Library), and in other areas for picnics and *athletic events. Flat or low heels.	Trunks or shorts without shirts may be worn only inside the Residence Halls or Gymnasium with permission of the Director.
Picnics, Athletics	Same as above ••	Slacks, sport shirts, bermuda shorts
Tennis and Bowling	Casual sportswear	Casual Sportswear
Swimming	Swim suits	Swim suits
Spectator Sports and Week-day Dates	Casual, simple clothing ••	Casual, simple clothing
Dressy Occasions Church, downtown, traveling, etc.	Simple dress-up clothes with hat, gloves, heels, stockings ••	Dress suit, dress shirt, color-coordinated tie and socks—always wear a tie
Receptions, teas, concerts,	Dressy dresses with heels, hose, gloves. Hats are optional ••	Same as above
Semi-formal Formal Occasions Banquets, Dances, etc.	One or two formal dresses should be sufficient. Short ones are more versatile. ••	A dinner jacket (Tuxedo) or a dark blue suit (Navy) with white dress shirt, black bow tie and black socks
Special Occasions Ushering, group activities, appearing on programs, etc.	A black basic dress ••	A dark blue suit (Navy) with white dress shirt, color-coordinated tie and socks
Occasions similar to the above, initiations, etc.	A white dress or suit. ••	Same as above

*See Residence Hall Regulations **Appropriate Purse

Marrying While in School

A student who decides to marry while enrolled in the University should secure the written permission of his parent and file this statement with the Dean of Men (or the Dean of Women) and notify his Head Resident.

Immediately following the marriage certificate of same should be taken to the Dean of Men (or the Dean of Women) for record purposes.

Women Visiting in Men's Residences

Women students may accept invitations to social activities in men's residences, on or off campus, only with approval of the Dean of Women.

A woman student may visit a campus residence for men provided (1) that she indicates her destination in her residence register and (2) that she reports to the director of the men's residence as soon as she arrives and as she departs.

She may visit an off-campus residence for men only with the approval of the Dean of Women and when chaperoned by persons approved by the Dean of Women. All such visits are restricted to the reception areas and lounges.

A woman student who is a resident of Nashville or the environs is expected to exercise the greatest of discretion should she find it necessary to visit a residence for men. In the event of such visit she must report to the director of the residence as soon as she arrives and as she depart.

Men Visiting in Women's Residences

Men may make social calls in women's residence halls from 4:00 p.m. to 7:00 p.m. Monday through Friday and Saturday and Sunday from 1:00 p.m. to 10:00 p.m.

Twilight Regulations

When riding in automobiles after twilight, students may not depart from or return to the campus by way of back entrance. (The Safety Department will be primarily responsible for enforcement of this rule.)

After twilight, students may not sit in automobiles parked on the campus. A violation of this rule will involve discipline.

Students are not permitted to socialize on the campus after twilight.

DISCIPLINE AND HONOR

Discipline is the state of order and obedience resulting from training which corrects, molds, strengthens, or perfects. When this development is initiated from within, more from personal conviction to attain desirable ends than from external compulsion, it is spoken of as self-discipline.

In large areas of our lives, we are free to choose either to do right or wrong. Life's growth consists largely of development by choice, and every act we undertake is an experience in advancement in character or reduction in the power of our will based on whether we make a right or wrong choice. Life, then, here at Tennessee State, as it moves on second by second and minute by minute, requires of us the constant exercise of self-discipline for proper moral growth.

Beyond self-discipline at Tennessee State, we must recognize authority which maintains order and is essential to our student life. When self-discipline fails, the Student Senates or the Faculty Advisory Committee must take action. Respect for authority comes largely by cooperation, understanding and mutual trust by the authoritative body and the student.

Honor is not a system of ethics but is instead simply being truthful in thought and deed. A truly honorable student is one who believes in strict conformity to what is right and would not consider doing anything untruthful or dishonest. He has the moral courage to stand up for what he believes is right no matter what his associates may say or think.

In giving explanations or stating facts, an honorable student is straight-forward and concise. He does not evade the issue nor does he attempt to conceal the truth by evasive statements or tricky wordings. He does not attempt to shift the blame nor disclaim responsibility for any of his acts. What he has done or failed to do he admits and takes his punishment like a man. He understands that tolerating or condoning a dishonorable act is a dishonorable act in itself. A student of honor recognizes that nothing is more important than learning what to do and what not to do.

POLICIES RELATING TO DISCIPLINE

The Faculty Advisory Committee will handle offenses requiring severe discipline.

The Men's and Women's Senates will handle offenses requiring discipline and severe discipline.

Whenever the discipline of an individual by a Senate body reaches a point where further discipline is perhaps necessary and could lead to dismissal, the case is then referred to the Faculty Advisory Committee with recommendations from the Senate Body.

When a Senate body has had an individual before it three times or when a Senate body has given an individual six demerits, the case is referred to the F.A.C. with recommendations. At a given hearing a Senate body may impose from 0 to 6 demerits.

Discipline Penalties Imposed

Discipline involves reproof, reprimand, social probation, or demerits.

Severe Discipline Penalties Imposed

Severe discipline involves suspension with right to return to the University at the end of a given period or dismissal from the University for an indefinite period of time depending upon the seriousness of the offense.

Social Probation: Individuals

The student upon whom a social probation penalty is imposed is restricted as follows:

1. He loses his social privileges, being permitted to attend class and religious activities only.
2. He is ineligible to represent the University in any capacity or activity.
3. He may not be elected to an office.
4. If the probation period is for six or more weeks, he shall immediately lose, for the remainder of the term for which he was elected, any office which he is holding.

Strict Social Probation: Individuals

The student upon whom a strict social probation penalty is imposed is restricted by one or all of the following penalties in addition to the social probation penalties:

1. He may not participate in extra curricular activities.
2. He is campus-bound.
3. He forfeits his work-aid scholarship.

Social Probation: Organizations

Social probation for fraternities, sororities, or other student organizations is defined as (1) the cessation of all group social activities at which both men and women are present and (2) the denial of permission for any public performances by the group or its representatives. Maximum social probation requires in addition the cessation of all social activities including rushing, pledging, and initiation activities.

Violation of Probation

A student or organization that violates any aspect of a social probation penalty is subject to suspension from the University.

Offenses Requiring Discipline

Boisterousness on or off campus
Abuse of property
Talking from or into windows of residences for women
Disrespect for Authority
Use of profanity
Violation of study hour regulation
Vulgarity in any form
Loitering on campus
Failure to observe automobile riding regulations
Any act militating against the maintenance of clean, attractive and healthful conditions of facilities, buildings and grounds.
Any other infractions of standards of conduct that require disciplinary action.

Offenses Requiring Severe Discipline

Peeping Tom
Failure to observe sign-out regulations
Illegal entry of a building
Prowling
Theft
Sale of alcoholic beverages
Possession, use, or involvement in the handling or sale of narcotics and alcoholic beverages.
Possessing, concealing or selling stolen property
Fighting
Destruction of property.
Disrespect for University authority
Man striking a young woman

Any act in violation of city, county, state or federal law.

Any other infractions of standards of conduct that require severe disciplinary action.

Cheating

Dishonesty of any kind with respect to examinations, written assignments in class, alteration of records, or illegal possession of examinations shall be considered cheating.

It is the responsibility of the student not only to abstain from cheating but in addition, to avoid the appearance of cheating and to guard against making it possible for others to cheat.

A student found guilty of cheating is reported to the Head of the Department, Dean of the School, Dean of Students for initiation of disciplinary action.

Individual Responsibility

Responsibility for knowledge and observation of procedures and regulations rests directly upon the student.

Mutual Responsibility

Men students shall acquaint themselves with the policies and regulations governing young women. In violation of any regulation, a young man is held equally guilty as the young woman whom he is accompanying.

FACILITIES AND SERVICES

UNIVERSITY BOOKSTORE

Books and Supplies

The University Bookstore, operated by the University, is located in the Student Union. Books and school supplies are available at reasonable prices. Bookstore hours are from 8:00 a.m. to 4:00 p.m. daily.

UNIVERSITY CAFETERIAS

"But for life the universe were nothing; and all that has life requires nourishment."

Meals

The University Cafeterias serve three meals daily, Monday through Friday and two meals daily on Saturday and Sunday. The meals are well-balanced, excellently prepared and are served cafeteria style.

Meal Tickets

Students who live on the campus must purchase a meal "ticket" for each quarter in residence.

Cafeteria Creed

There are certain definite regulations which students must follow in order to create a wholesome environment and assure real enjoyment of meals at all times. The Cafeteria Creed is a student-conceived, positive statement of the regulations of the University Cafeteria. Students are required to live up to the creed.

OUR CAFETERIA CREED

Cafeteria Creed

I, as a TSU student, have an inescapable part in aiding the University in achieving its goals.

I am proud of our cafeteria.
I will be courteous at all times.
I will be patient and considerate of others.
I will take up my tray.
I will refrain from cutting line.
I will select my food wisely and quickly.

I will observe cafeteria regulations.
I will NOT WASTE food.
I will always dress appropriately.
I will be hospitable to guests.
I will always respect myself and, therefore, I will respect any person in authority.

Non-transferable meal tickets

Meal tickets are not transferable. Transfer of meal tickets is regarded as an act of dishonesty.

Equipment

Cafeteria equipment is not to be carried from the cafeteria without the approval of the Cafeteria Manager.

Carrying out Meals

Meals may not be carried to persons who are not confined in the infirmary except by arrangements through the Residence Hall Director.

UNIVERSITY LIBRARY

THE MARTHA M. BROWN MEMORIAL LIBRARY was officially named on November 23, 1949 in honor of a member of the first faculty who among other duties served as librarian for twenty-five years. This occasion marked the completion of an annex to the original library erected in 1927.

The building provides a seating capacity for 629 students at one time. Sixty carrells are available on the periphery of bookstacks for graduate students. The present collection contains over 111,000 books, 32,000 government documents, 2,000 pamphlets, and 500 recordings. The library subscribes to 775 magazines and 36 newspapers. A microfilm collection of 700 reels is available for newspapers including, THE NEW YORK TIMES, 1947-date, PITTSBURGH COURIER, 1923-date, and THE SAVANNAH TRIBUNE, 1875-1915, and FACTS ON FILM. In addition to the RECORDAK microfilm reader, a portable reader is available for loan to graduate students and faculty members.

Hours

Monday-Friday	8:00 a.m. to 10:00 p.m.
Saturday	8:00 a.m. to 1:00 p.m.
Sunday afternoon	2:00 p.m. to 5:00 p.m.

The Sunday afternoon hours will not be maintained during the summer term. Changes in above schedule will be posted in the library and other buildings.

Privileges — All students officially registered, faculty and staff members of the University are entitled to use library materials in keeping with regulations governing their use.

Securing Privileges — All students must present their account card, receipt, or schedule card stamped by the bursar at the circulation desk on the second floor. The student fills out an "application card" which is an agreement that library regulations will be observed. In exchange he is given a "library identification" card which must be presented at each loan desk. The identification card is to be renewed after each registration period. Duplicate cards are issued upon payment of CHANGE OF ADDRESS should be reported promptly at the circulation desk.

Stack Privileges — Admission to the first bookstack adjacent to the circulation desk is limited to graduate students and faculty members. "Stack Permit Cards" validated each quarter are issued only to graduate students. Temporary stack privileges may be granted seniors upon approval of the librarian in charge.

Inter-Library Loan Service — Theses or materials not available in the library may be secured on an inter-library loan basis from other libraries in or out of the city. Because of the heavy demand, this service is primarily limited to graduate students and faculty members. Forms are provided at the circulation desk for this service. Transportation fees are to be paid by the borrower. Deposits are to be made as follows: Theses $3.50; microfilm $1.00; books 25c. Any difference in transportation cost and deposit will be returned to the borrower.

Library Regulations

The length of loan periods vary according to the department from which books are borrowed.

Circulation 2nd Floor — Most of the books in the library are in the general collection of circulation department on the second floor. They may be withdrawn for a 14 day period during the regular school year and a 7 day period during summer session. One renewal period may be granted provided the title is not in demand.

Reserves 1st Floor

Books may be borrowed for use in the room for a one-hour period with an automatic extension of one hour if there is no request for them. They may be borrowed for "overnight" use one-half hour before closing time provided they are not being used in the room. "Overnight" loans are to be returned the following school morning by 9:00 a.m. Master theses may be borrowed by *graduate students* for a two-day period. Senior projects are to be used only in the room since there are no duplicate copies available.

Reference Books and Periodicals 2nd Floor

Reference books and periodicals must be used in the reading room and may not be borrowed for home use.

Recordings 1st Floor

The collection of recordings in the music room are not circulated for home use. Selected requests will be played during the hours the music room is open.

Overdue Notices

At the expiration of the loan period "overdue" notices are sent as a courtesy from the library to the borrower using the address given on the application card. *Failure to receive such notices is not considered as a valid reason for not returning books promptly; nor does it relieve borrower of fines incurred.*

The library reserves the right to recall books before the date due.

Fines

Fines are assessed according to the collection from which books are borrowed. The system of fines is intended to insure the prompt return of borrowed materials.

Two cents a day is charged for each day a book is overdue when borrowed for a 14-day loan period from circulation department.

Reserved books borrowed for overnight and not returned by 9:00 a.m. accumulate a fine of 25¢ for the first hour or part of an hour. 5¢ per hour will be charged for each additional hour on the first day, and 10¢ per day for each additional day.

Books not returned on the date due will accumulate a fine of $1.00 per day for the first offense. For the second offense, the graduate student will be charged $1.00 per day plus the withdrawal of privilege for borrowing books for home use.

Lost Books

Lost books must be reported promptly to the desk from which they were borrowed and replacement costs paid. Binding costs will be added to list price of books originally received in paper binding.

If a lost book is found and returned to the library before the end of a quarter or summer term, a refund less the accumulated fines will be made by the librarian. After monies for fines and lost books is submitted to the bursar, no cash refund can be made.

Failure to Pay Fines

At the end of each quarter or term the names of all borrowers who have failed to return materials will be submitted to the bursar, vice president, president and other university officials. Further library privileges will be denied and the students' grades withheld until his library record has been cleared.

General Conduct

Quiet must be observed throughout the library building at all times so that an atmosphere for study can be maintained.

Students are requested to keep reading room tables, carrels, stacks, corridors and lounges tidy by using trash cans conveniently located for disposing of waste materials.

Food or soft drinks are not to be brought to library reading rooms.

General Library

During the first week of fall quarter, freshmen and new students are taken on a "library lecture tour" at which time "Rules and Regulations" are distributed and thereafter made available at each service desk. Become familiar with the location of materials and rules governing their use.

Students are not to lend their identification card to anyone as the person whose name appears as borrower will be held responsible for the materials until returned.

The full name should be written when borrowing a book as there may be several students with identical names.

When help in finding materials is needed ask the adult librarians for assistance.

UNIVERSITY POST OFFICE

The University Post Office is a U. S. Government branch office.

Services Individuals may cash United States money orders and send insured packages, ordinary parcel post, and registered mail at the University Post Office.

Securing Mail Students who reside in the city are requested to letters, registered packages, regular packages and insured packages are to be secured in the Post Office. All other mail is to be secured from the residence halls. A mail list is posted daily on the door of the University Post Office.

Post office clerks are not permitted to give any mail to any individual other than that addressed to him except in cases of illness. In such cases, the student will present a written request signed by the school nurse.

Address for Correspondents Students who reside in the city are requested to have their mail addressed to the place where they reside. Students who live on the campus are requested to have their mail addressed to the residence hall where they live. A model form for campus students is given below. City students may obtain a campus mail box for a nominal fee.

Mr., Mrs., or Miss Jane or John Doe
Room 0000 or Box 000
Blank Hall
Tennessee A. and I. State University
Nashville, Tennessee, 37203

Large packages to be delivered by the railway express and all packages from local stores to be delivered by merchant delivery should be addressed to residence halls.

Post Office Hours

Monday through Friday

You may purchase stamps, mail packages, and pick up regular and insured packages.

Also certified and registered mail: ..... 8:30 a.m.-11:50 a.m.
1:00 p.m.- 3:50 p.m.

Money orders may be made out and cashed daily, except Saturdays (no money order business on Saturdays): ..... 8:30 a.m.-11:50 a.m.
1:00 p.m.- 2:30 p.m.

Saturdays

You may purchase stamps, mail packages, and pick up regular packages, insured packages, certified letters, registered letter and postage due mail: 8:30 a.m.-12:00 Noon (the post office closes at noon on Saturdays).

On weekends, Holidays and after the Post Office closes, special delivery mail may be secured from the Office of Hale Hall.

Securing Registered, Certified and Postage Due Mail. Also Regular and Insured Packages

All mail (except regular mail) will be posted on the door of the University Post office as promptly as received. These lists should be checked carefully before inquiring for mail. When calling for mail or packages of any kind, or presenting U.S. Postal money orders for cashing, it is mandatory that the addressee's I.D. Card be presented for identification. Social Security cards or drivers' licenses are not accepted for identification purposes.

C.O.D. Mail And Packages

You may pick up C.O.D. mail and packages from the Post Office by presenting your notice and the correct amount of money to the Post Office clerk. C.O.D. packages are not sent from the Post Office.

Postal Directory

It is the student's responsibility to see that the Post Office has his proper campus and permanent addresses at all times. Any change of address should be reported to the Post Office so that the postal directory may be kept up to date. This is especially important on withdrawing from the University or in having mail forwarded. THE POST OFFICE DOES NOT HANDLE GENERAL DELIVERY MAIL.

Return Address

Name, dormitory and return address with zip code number should be placed on all mail so that mail returned to the Post Office for postage or better address may be delivered to the proper owner. The Zip Code for the University Campus is 37203.

WITHDRAWAL

When a student withdraws from the University, this should be done in keeping with University policy. Failure to do so may jeopardize the student's academic record. Withdrawal forms are issued at the Dean of Students Office.

USE AND CARE OF UNIVERSITY PROPERTY

The University is proud of its campus and justly so. A great deal of time, effort and money have been expended in building and beautifying it. Students are urged to use the available facilities wisely and to share the responsibility of keeping the campus in good condition.

Abuse of Property

Students guilty of defacing or destroying University property will be charged with the cost of repairs and disciplined according to the offense. Writing on buildings, trees, fences, and walks is strictly prohibited.

Campus Cleanliness

Containers are provided for refuse so that there will always be clean drives, walks, lawns, classrooms, lobbies, balconies, corridors, halls and living quarters.

A student guilty of littering up buildings and grounds, or otherwise creating or contributing to the unsanitary and unclean conditions thereof, shall be subject to discipline and shall be indefinitely suspended from the University after the third such offense.

Signs

Permission to post signs on official bulletin boards should be secured from the supervisor in-charge. Thumb tacks must be furnished. Signs must be removed within 36 hours after an activity has taken place.

Posting of outdoor signs must be approved by the Office of the Dean of Students. Outdoor signs must be removed within 24 hours after an activity has taken place.

Public Address System

Loud speakers are to be used outdoors between 8:00 a.m., from 12 noon to 1:00 p.m. and after 6:00 p.m. only, unless special permission has been secured. Plans for use of public address systems must be approved by the Office of Student Activities. Failure to observe these regulations will result in revocation of the privilege of using this medium of advertisement.

Buildings

Requests for permission to use University buildings should be made to the Office of Student Activities, Room 120 of the Student Union.

Cafeteria Equipment

Dishes and other equipment and furnishings are not to be taken from the Cafeteria without approval of the Cafeteria Manager and Business Manager.

SPECIAL PROTECTIVE SERVICES

It is the responsibility of the night watchman to safeguard the property and residents of the University while on duty. He is authorized to take the necessary measures for the effective and efficient performance of his duties.

Students of the University must give due recognition to his position as an authorized and duly deputized officer of the University.

Failure to carry out his directions constitutes a misdemeanor or legal offense subject to disciplinary action by the University.

STUDENT EMPLOYMENT

Freshmen

Freshmen students are urged to come to the University with their fees on hand, especially for the first quarter of University study.

As the first year is one of general adjustment to University life and studies, the freshman student is advised not to work.

Work-load

Students at all levels are urged to seriously consider the limitations placed on academic performance by carrying a heavy work schedule. If employment is accepted, the academic load must be lightened accordingly. Students who do remunerative work for 18 or more hours per week will be required to drop one or more major subjects. In such instances, students shall always have the right to appeal to the Dean of Students.

Securing Employment

Assistance in finding suitable part-time employment on the campus and in the city may be obtained through the University Work Aid Office and the College Work Study Office.

Reporting Employment

All students must report to the Office of the Dean of Students and their major adviser any remunerative work they are carrying.

STUDENT HEALTH SERVICE

The Student Health Service is maintained to safeguard the health of students and the general University community. The University provides a Health Center including an Infirmary.

Twenty-four hour service is available to all students of the University.

Policies

New students are required to have physical examinations prior to registration.

No charges will be made for first aid and drugs used in simple treatment.

Campus students confined by illness must report to the Health Center for hospitalization.

All cases of illness must be reported to the Residence Hall Director or nurse on duty at the Health Center.

Students suffering from minor illnesses are hospitalized in the campus Infirmary without charge.

Students suffering from illnesses for which the University facilities are inadequate are hospitalized at one of the local hospitals at their own expense. The Director of Student Health Service shall immediately notify parent or guardian and receive permission for such hospitalization.

Clinic Hours

Regular clinic hours for medical aid are from 6:00 p.m. to 8:00 p.m. daily Monday through Friday.

Regular clinic hours for dental aid are from 6:00 p.m. to 8:00 p.m. Monday, Tuesday, Thursday, and Friday.

During these hours, students requiring health services are examined, advised on health problems, and may receive medical care by one of the University physicians.

STUDENT HOUSING

Students attending the University may live (1) at home, (2) in the University Residence halls, or (3) in University-approved residences.

Campus Residence Halls for Women

Objectives

Tennessee State University, recognizing the many advantages that group living affords, maintains four residence halls and one center for women. These provide comfortable and healthful living quarters, offer fine opportunities for cultivating life-long friendships, and for receiving such guidance as will help build high standards of conduct, scholarship, social skills, personal appearance, the ability to live with others and the desire to render service in the communities where students will go after graduation.

Residence Halls for Men

Objectives

Accommodations for men are provided in the Frank G. Clement Hall, Watson Hall, and East Hall.

This University Residence Program has the following five objectives:

1. To develop brotherhood, unity and peace in the Residence Halls.
2. To develop gentlemen of the highest order.
3. To protect and guide residents.

4. To provide for freedom of expression and personal development.

5. To maintain clean buildings and grounds.

Men residents are expected to cooperate in the achievement of these objectives.

General Residence Hall Regulations—Men and Women

Student Responsibility

The University holds the student responsible for knowledge and observance of each regulation.

Campus Leave

Students in residence halls are expected to register when leaving the campus and returning to it. Students must indicate where they may be reached in any emergency. When signing out for theaters the name of the theater must be included. Any violation of this rule will result in disciplinary action.

Care of Rooms

Students are responsible for keeping rooms in good condition at all times. Nothing may be driven into or pasted on walls or woodwork and furniture may not be painted except by permission of the person in authority.

Dishes and other cafeteria materials are not to be taken from cafeterias to residence halls. Neither are furnishings within the residence halls to be moved from one room to another. Students guilty of defacing or destroying the structure and furnishings of the residence halls will be charged with the cost of repairs and disciplined according to the offense.

Study Hour

Monday through Friday the period from 7 p.m. 10 p.m. is to be observed as a quiet study period. Activities that interfere with this requirement are prohibited.

Guests

Guests will not be allowed to visit rooms of students without permission of the Head Resident. This does not apply to boarding University women who are permitted to visit the residence halls for women, or to boarding University men who are permitted to visit the residence halls for men. However, permission must be obtained from both Head Residents in order for a resident to spend the night in another residence hall.

Use of Utilities

The electric power is to remain on throughout the day in all residence halls. Lights are to be used only when needed and are never to be left on when students are not in the room.

After 11:00 p.m., the telephones are to be used only for long distance calls and Western Union Messages.

Use of Electrical Appliances

Special areas are provided for ironing. Ironing in bedrooms is unfair to other residents and is prohibited. Cooking in bedrooms is prohibited. Persons found guilty of violating these regulations will be subject to discipline.

Possession of Firearms, Other Weapons

It is a civil offense as well as contrary to the policy of the University for students to possess fire arms or other weapons. Such weapons are to be registered and deposited with the Dean of Men or Dean of Women.

Dress

(See "What to Wear—Where", p. 13)

When a young man calls at a woman's residence hall inappropriately dressed the Head Resident may deny him admission and/or request him to leave.

When a student prepares to leave his residence hall inappropriately dressed for an occasion the Head Resident may deny the student the privilege of leaving the hall.

Residence Hall Regulations—Men

Responsibility for Policies

Men residents are expected to cooperate in supporting the policies, practices, and programs established in the residence halls.

All residents have the privilege of making recommendations concerning policies, practices, and programs.

Off Campus Visits

In spending weekends or longer periods off campus to visit relatives, and friends in the city or in other cities or towns, residents are expected to leave such information on a blank supplied by the Head Resident. This must be done in order that the Administration may know where to contact each resident in case of an emergency.

Denial of Residence Privilege

The Deans reserve the right to recommend the denial of further or future residence to any student who is guilty of unbecoming conduct.

Men Guests

Friends or relatives are not to be housed in men's residence halls without approval of the Housing Officer.

Residence Hall Regulations - Women

Responsibility for Policies

Women residents are expected to cooperate in supporting the policies, practices and programs established in the residence halls.

Off Campus Visits

No young woman shall be permitted to spend the night off campus or to visit relatives and friends in the city or in other cities without written permission from parents or guardians, which in turn is acted upon by the Dean of Women who has the right to refuse or grant permission. (For local visits invitations must be filed.)

Out of Town Visits: Married Graduate Students and In-service Teachers

Whenever a graduate student is to be away from the University (which includes going home for a visit) a written permission must be in the hands of the Residence Hall Director before the graduate student leaves. *Exception:* This does not apply (a) to married graduate students, and/or (b) to in-service teachers with three or more years of teaching experience. However, under no circumstance is a hall resident to visit out of town without apprising someone in authority in the residence of that fact.

No special privileges are granted married or mature residents who reside in undergraduate halls. The regulations for such persons are the same as those set for other women students of their classification.

Signing Out

Each young woman who leaves a residence hall will, in person, sign the hall register giving her exact destination and time of departure (1) when leaving her residence after 6:00 p.m. for any purpose, (2) when going off campus for and out of town visits such as for church, (3) when going out of town. She will sign the register when she returns, giving exact time. No student may sign in another.

Time Schedules

The following schedule will be observed by the young women of the University who sign out for destinations on and off Campus.

ON CAMPUS

Accommodation	Days	Sign Out	Sign In	Time Required
[illegible]	Monday-Friday	With permission after 6 p.m.	Not later than 10 p.m.	Destination
	Saturday	After 6 p.m.	Not later than 10 p.m.	
	Sunday	After 6 p.m.	Not later than 10 p.m.	
[illegible]	Monday-Friday	With permission after 6 p.m.	Not later than 10 p.m.	Destination
	Saturday	After 6 p.m.	Not later than 10 p.m.	
	Sunday	After 6 p.m.	Not later than 10 p.m.	
[illegible]	Monday-Friday	After 6 p.m.	Not later than 10 p.m.	
	Saturday and Sunday	After 6 p.m.	Not later than 10 p.m.	
[illegible]	Monday-Friday	After 6 p.m.	Not later than 10 p.m.	
	Saturday and Sunday	After 6 p.m.	Not later than 10 p.m.	
[illegible]	Monday-Friday	After 6 p.m.	Not later than 10 p.m.	
	Saturday and Sunday	After 6 p.m.	Not later than 10 p.m.	

OFF CAMPUS

[illegible]	Monday-Friday for shopping etc.	After School	Destination
	Saturday	After 1 p.m.	
	Sunday		
[illegible]	Monday-Friday for shopping etc.	After School	
	Saturday	After 1 p.m.	
	Sunday		
[illegible]	Monday-Friday for shopping etc.	After School	
	Saturday	After 1 p.m.	
	Sunday		

OFF CAMPUS Cont'd

Classification	Days	Sign Out	Sign In	Privilege per week
SENIORS	Monday-Friday (for shopping etc.)	After 1 p.m.	Not later than 9 p.m.	3 days (Time not to exceed 6 hours)
	Friday-Saturday	After 1 p.m.	Not later than 12 p.m.	(Time not to exceed 6 hours)
	Sunday*		Not later than 11 p.m.	
GRADUATE STUDENTS	Monday-Sunday	At any time	Not later than 12 mid night	Unlimited

* Late permission must be secured from the Resident Hall Director.
All young women have the privilege of staying during Dean's week-ends in the city under regulations according to classification given above.

Riding in Automobiles

Women residents are permitted to ride in automobiles only with written permission of parent sent to and approved by Dean of Women.

A college woman riding in an automobile without permission will be subject to discipline.

When riding in automobiles a college woman whose escort fails to accompany her from and to her residence is subject to discipline.

Off Campus Housing

There are a limited number of University-approved homes in the city where students may live.

Policies

All off campus housing is to be approved by the University Housing Office.

Students who live in homes in the city are expected to maintain the same general standards required of students who live on the campus.

It is the policy of the University for women students to live in campus residence halls unless their parents or parents live in the city of Nashville.

It is the policy of the University for men students to live only in approved homes where the householder resides.

Residence in approved residences must all be of the same sex.

Change of Address

Any change of address is required immediately to the University Housing Office. Student failing to do so is subject to discipline.

The Student Personnel Services Program aims to assist the student in developing the skills, attitudes, understanding and insights which will assure full expression of his powers as a whole, dynamic person. Emphasis is on university relationships and experiences complementing formal instruction.

Reaching the interest, needs, and purposes of all students for superior educational, social, vocational, and cultural orientation, adjustment, and growth involves the supplemental and coordinate planning of numerous university officials, faculty and staff members, among these are the Dean of Students, the Dean of Men, the Dean of Women, the Deans of the Schools and Heads of Departments, Director of the Placement Bureau, Director of Veterans' Affairs, Director of Housing, Head Residents, Director of Food Service, Supervisor of Off-Campus Students, supporting counselors such as major advisers, University Counselors, advisers to foreign students, chairmen and directors of university agencies and organizations affecting the welfare of students, committees such as the Guidance Committee, the Graduate Work Committee, Social Committee, the Faculty Advisory Committee, and consultant specialists in medicine, psychiatry, psychology, social work, community relations, and vocational choice and placement.

The Dean of Students

The Dean of Students is the officer of the University charged with the supervision and coordination of all Student Personnel Services. He is a counselor to the students and has immediate supervision of their welfare and activities. The services of his office are for all students. Students are urged to use them.

The Dean of Students' Office includes a number of offices which offer services to students. He delegates to the directors of these various services authority for carrying out specific phases of the student personnel program.

Methods of Assigning to Major Advisers

Upon being admitted to the University, each student is assigned by the Dean of Admissions, on the basis of the student's choice of school, to the Dean of that School, who refers the student to the head of the major department for guidance. The department head assigns every major student in the department to a teacher in the department known as the major adviser.

Responsibilities in Selection of Courses

The responsibility for the selection of courses rests, in the final analysis, upon the student; it is not the province of the adviser to refuse approval of the course which the student is entitled to elect. Similarly, it is the primary duty of the student to pursue courses in their proper order to meet the requirements for graduation. When the student registers for each quarter, he is required to consult his adviser concerning his choice of studies and must obtain written approval of the adviser on all schedules to be pursued. The student is urged, further, to confer with his adviser frequently, at least monthly, during each quarter.

Types of Problems Handled by Major Advisers

Major advisers counsel students not only in curricular or educational matters but give attention to varied personal and inter-personal problems of students—health, financial adjustment, social adjustment, vocation of choice and proposed after-college adjustment to life.

Major advisers who counsel freshman students assist the students with innumerable matters such as adaptation to new ideas, how to study, health and emotional adjustment, budgeting time and money, extra-class activities, and residence hall and home relationships.

In solving specific problems, the Dean of Students assists students individually and in groups directly and by referral to responsible offices listed in the Student Personnel Services Directory and to appropriate on-campus or off-campus sources of assistance.

Tests and inventories are available for use with all students. These include tests of mental ability, aptitude and achievement, personality and vocational inventories.

University Counselors

University Counselors are sophomores, juniors, and seniors who, because of their leadership ability, have been chosen to assist with the orientation of freshmen and other phases of the university guidance program. The University Counselors include two groups: the Senior Counselors, who have had more than one year's experience as student counselors, and the Junior Counselors, who have had less than a year's experience as student counselors.

THE PLACEMENT BUREAU

The Placement Bureau assists seniors, alumni, and special students in securing positions for which they are qualified. It has follow-up and counseling services and arranges interviews between prospective employees and employers. Students are also assisted in obtaining part-time employment.

The Placement Bureau maintains permanent personnel records, including recommendations and ratings of the graduates. These records serve as the source of information which is frequently requested from the University. Mailing forms, including scholastic achievements, background, work experience, faculty recommendations, and other pertinent information are compiled and sent to a prospective employer at the request of the graduate, a faculty member, or the employer.

Graduating seniors and graduate students are required to register with the Placement Bureau which is located in Room 200, Student Union. The services of the Placement Bureau are free to employers, students, and alumni of the University.

PERSONAL PROPERTY

HONORS, SCHOLARSHIPS AND AWARDS

Departmental and Departmental Club Awards

American Chemical Society, Student Affiliate Chapter Award
Business Education Award
History Study Club Award
Home Economics Club Award
Industrial Education Award
Literary Guild
Mathematics Club Key
Mathematics Club Certificate of Merit
Music Department Awards
Tennessee State Players Guild Awards

Fraternity and Sorority Scholarship and Achievement Awards

Alpha Kappa Alpha Sorority
Alpha Phi Alpha Fraternity
Delta Sigma Theta Sorority
Omega Psi Phi Fraternity
Phi Beta Sigma Fraternity
Sigma Gamma Rho Sorority
Zeta Phi Beta Sorority

Honor Roll

Students who earn a quality point average of 3.25 or above in all subjects and who pursue a minimum of 12 quarter credit hours in the regular curriculum shall be placed on the University Honor Roll for that quarter. A public announcement of the honor roll is made following the end of each quarter during the regular school term.

Honorary Scholarships

The Most Worshipful Prince Hall Grand Lodge of Free and Accepted Masons of Tennessee and its Jurisdiction give five annual scholarships to the students of the University under the following categories: (1) the highest ranking freshman student, (2) students of unusual ability and promise, (3) sons and daughters of living Masons, (4) sons and daughters of deceased Masons and (5) students of unusual ability who are Tennessee Prince Hall Masons. The scholarships range from $100 to $300.

Nathaniel Green Society Awards

Awards are presented annually to outstanding Green Society members during the year.

Special Awards and Trophies

Special awards and trophies are presented annually at a formal convocation during Academic Awards Day and a Co-Curricular Awards Dinner.

"Women of the Blue"

Beginning in 1960, outstanding women students have been cited on "Women's Day" for their contributions in scholarship, service, and leadership roles at the University. Beginning in 1963, these students have been designated "Women of the Blue," members of the Blue Society.

Student Council

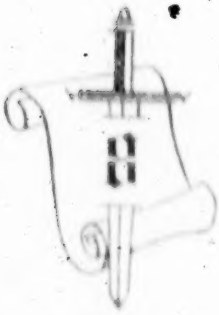
Awards are presented to members annually.

University Counselors

Certificates are presented to graduating University Counselors. Keys are awarded to Senior Counselors with two years of outstanding service.

Who's Who in American Universities and Colleges

Recognition in Who's Who in American Universities and Colleges is given to students classified as juniors, seniors, and graduates who are outstanding in scholarship, leadership, educational and extra-curricular activities, general citizenship and service to the University and who show promise of future usefulness.



STUDENT GOVERNMENT

The Student Council, the key student organization, shares with the administration in planning and regulating student affairs; it appoints student representatives to University committees, stimulates student participation in campus life and recommends student organizations to the administration for official recognition. (*See Student Council Constitution, Purposes.*)

Constitution of the Student Council of Tennessee A. and I. State University

Preamble

We the members of the Student Council of Tennessee A. and I. State University of Nashville, Tennessee, confident in our ability to conduct satisfactorily our lives and undertakings at the University, but recognizing the value of assisting in the fulfillment of the several purposes, and in assuring the responsible performances of those functions which concern us as a body, do declare, conceive a functioning body and do hereby establish this constitution.

Article I

Purposes of the Student Council Adopted Fall Quarter, 1967

1. To present, as delegated in the constitution, student opinion to the administration and faculty.
2. To assist in the administration of student activities as agreed upon by the administration and the student body through its chosen representatives.
3. To cooperate with the administration in upholding the basic philosophical concepts of high scholastic standards.
4. To cooperate with the administration in upholding the basic moral and ethical concepts of the University.

5. To exercise the powers and responsibilities of student government as provided in the constitution.

Article II

Composition of the Student Council

Section 1. The Student Council shall be composed of five members of the Senior Class, three members of the Junior Class, two members of the Sophomore Class, one member of the Freshman Class and one member of the Graduate School.

Section 2. A. Election to Student Council shall be held in class divisions, seniors electing seniors, juniors electing juniors, sophomores electing sophomores, freshmen electing freshmen, and Graduate School electing graduate member. To be eligible to membership, a student must have on file in the Registrar with a total of hours meeting his active status with one of the five classes. Candidates must be openly nominated in an open class meeting during the Spring Quarter. These elections must be presided over by the faculty advisor and be held at the time class officers and other desired representative officials are chosen. (Revised 1947)

Section 2. B. Candidates must have an average for the preceding quarter's work of 2.5. Each class has the right to prescribe additional qualifications.

Section 3. Any member of the Student Council may be moved from the Council by a majority vote of the Council upon the presentation of a petition requesting that a member be removed and signed by 60 per cent of the students in the class represented. If petitions presented to the Council signed by 80 per cent of the students and member represents, such action shall not require a recall with or without the affirmative vote of the Council.

Section 4. If any member shall be removed as in Section 3, the President of that class shall call an election within five following notice of said dismissal and elect a successor.

Organization of the Student Council

SECTION 1. The officers of the Student Council shall be President, a Vice-President, a Secretary, a Treasurer and a Public Relations Director, all of whom shall be duly elected council members.

SECTION 2. The election of officers of the Student Council shall be held not later than five days after the election of the Council proper.

A. The President of Student Council shall preside over this election (Revised 1947).

B. The majority of the members present is necessary for election of these officers.

SECTION 3. Powers delegated to officers and members of the Student Council:

A. *President.* The President shall be the executive head of the Council. He shall call all meetings of the Council. He shall act for this body in all cases of emergencies. He shall be an ex-officio member with right to vote on all committees of the Council. He shall act as the Council's representative on all matters pertaining to athletics.

B. *Vice President.* The Vice President shall preside at all meetings in the absence of the President. In case of failure of the President to return to school, or his disqualification, the Vice President shall assume the office of President. He shall at all times assist the President.

C. *Secretary.* The Secretary shall preside at meetings in absence of the President and Vice President. He shall keep the minutes of each meeting of the Student Council and see to it that permanent records of all Council business are kept. These records shall be open to any member of the Council.

D. *Assistant Secretary.* The Assistant Secretary shall at all times assist the secretary and act in his absence.

E. *Treasurer.* The Treasurer shall hold and record any funds delegated to the Council.

F. *Public Relations Director.* The Public Relations Director shall assist in promoting the public relations between the Council and students, in making announcements and in advising the Council's activity.

Article IV.

Duties

SECTION 1. It shall be the duty of the Student Council:

A. To represent the student body in all matters.

B. To provide for proper hearing of parties interested in any proposed action. To effectuate this provision, it is hereby made the duty of the Council upon receiving a petition requesting such hearing and signed by fifty students to call a special meeting of the Council at which those interested in the proposed action, may attend and join in discussion. This meeting must be called not later than five days from receipt of petition.

C. To recommend to the administration for recognition all clubs, social and technical, fraternities, sororities, and any organization having relationship or claiming relationship with the University. No society or organization shall have such claim unless recommended by the Council.

SECTION 2. The government of the student body, and student activities shall be delegated to the Council under the supervision of the faculty adviser.

SECTION 3. The Student Council shall be empowered to recommend to the President, additions in personnel of the faculty as it shall from time to time deem it necessary.

SECTION 4. The Student Council shall be empowered to approve or disapprove the selection or election of students who are to represent the University in any manner.

SECTION 5. The Student Council shall have the power to carry out the provisions of this constitution and provide for better government by enacting appropriate or necessary by-laws.

Article V.

Student Elections

SECTION 1. The Student Council shall be empowered to call and conduct any and all student elections after its election and to enact by-laws necessary to convey these powers into effect.

SECTION 2. The date of any student body election shall be set each year by the Council two weeks in advance.

SECTION 3. Voting in all elections shall be by secret ballot.

Article V.—A

SECTION 1. Same as Article V. Section 1.

SECTION 2. Same as Article V. Section 2.

SECTION 3. Voting in all elections shall be by an Australian ballot.

SECTION 4. The Student Council in joint session with the Student Election Commission shall be empowered to review and approve the program of work submitted by the Student Election Commission for the annual election of the President of the Student Council, Vice President of the Student Council, and "Miss Tennessee State University". Said program must be submitted to the Administration for approval.

SECTION 5. The Student Election Commission shall be empowered to conduct said election with the assistance of the Student Council.

a. Qualifications for the President and the Vice President of the Student Council: Each must be a senior (either sex eligible); have an accumulative average of 2.80 or above; be certified by the Office of Admissions, Office of the Bursar, and the Chairman of the Advisory Committee.

b. Qualifications of "Miss Tennessee State University": "Miss Tennessee State" must be a senior with at least one year's residence at Tennessee State University; have an accumulative average of 2.50 or above; have high moral character, poise, physical attractiveness, loyalty, amiable personality, friendly attitude and common sense; must be certified by the Office of Admissions,

Office of the Bursar, and the Chairman of the Advisory Committee.

c. Inauguration of the President of the Student Council: The President of the Student Council shall be officially invested with all the rights and privileges incident to his office at formal inaugural ceremonies during the first week in October following his election.

d. Coronation of "Miss Tennessee State University": The formal Coronation of Her Majesty, "Miss Tennessee State University," shall be held during the second week in October following her election.

Article VI.

Publications

SECTION 1. The official publication of the Student Body shall be known as The Meter. Other student publications recognized by the Council in the future may have official status.

SECTION 2. There is hereby established a publications board consisting of the following members:

1. President of the Student Council
2. President of the Junior Class
3. President of the Senior Class
4. One elected member of the Student Council (chosen by the Council members).
5. A faculty Adviser (selected by the Council members).

SECTION 2a. The President of the Student Council shall be chairman of this board and two faculty members shall be chosen to serve as advisers.

SECTION 3. The duties and powers of this publications board shall be:

a. To choose the editor and business manager of the Meter and other recognized student publications.

b. To advise editors and business managers to settle disputes between staffs.

c. To dispose of editors and business managers for causes provided for in Section four of this article.

SECTION 4. The editors of student publications shall have free range in determining the editorial pol-

icies of their respective publications. However, should an editor publish anything that may be regarded as ungentlemanly, unethical, libelous or lacking in discretion he shall be subject to trial and possible dismissal by said Board.

Article VII.

Organizations

SECTION I. The conduct of all campus organizations must meet the approval of the Student Council.

Article VIII.

By-Laws And Amendments

SECTION 1. The Student Council is empowered to enact whatever By-laws it deems necessary provided that a proposal for adoption by the Council is presented by: a. a member of the student council, b. petition signed by 15 members of the student body, c. petition signed by three-fifths of the faculty.

Article IX.

Miscellaneous

SECTION 1. In all matters of procedure which are not covered by this Constitution, Robert's Rules of Order shall control and take precedence.

Article X.

Adoption

SECTION 1. This constitution was adopted December 1, 1943, by Council Members:

Edward Wilson Reed, President
Lawrence Wendell McVoy, Vice President
Louise Madelyn Willis, Secretary
Mary Ann Pride, Assistant Secretary
Cecil Armillo Partee, Editor, Ayeni Collegian

New Proposals in Student Government

(Adopted Fall Quarter, 1957, to be Incorporated in the Constitution of the Student Council of Tennessee A. and I. State University)

Purpose

(See Student Council Constitution)

Organization of Student Council

The Student Council shall consist of fourteen members: The president and vice president elected by the student body and five members of the Senior Class, three members of the Junior Class, two members of the Sophomore Class, one member of the Freshman Class, and one member of the Graduate School.

THE SENATES

Women's Senate

A branch of student government dealing with women's affairs shall be called the Women's Senate.

1. The Women's Senate shall consist of twenty members.
2. Term of service in the Senate shall not exceed three consecutive quarters.
3. Any student who withdraws from the University while a member of the Senate may not complete his unexpired term should he return to the University except that he goes through the qualifying and election procedures again.

Men's Senate

A branch of student government dealing with men's affairs shall be called the Men's Senate.

1. The Men's Senate shall consist of twenty members.
2. Term of service in the Senate shall not exceed three consecutive quarters.
3. Any student who withdraws from the University while a member of the Senate may not complete his unexpired term should he return to the University except that he goes through the qualifying and election procedures again.

Purpose of Senate

The Senates have three major purposes:

1. To handle discipline problems.
2. To encourage and foster academic excellence through a well planned and continuously operative program.
3. To foster the highest ideals of womanhood and manhood.

Eligibility for Membership

Standards of eligibility for Senate Membership shall be determined by President and Vice President of Student Council, Dean of Students, Student Personnel Executive Committee, and Department Heads.

Officers

The five Officers of each of the Senates shall be Chairman, Vice Chairman, Parliamentarian, Secretary, Reporter General and Chaplain.

The woman receiving the highest number of votes in the Senatorial Elections shall be chairman of the Women's Senate and the man receiving the highest number of votes shall be chairman of the Men's Senate.

Executive Committee

The Executive Committee of Student Government on Women's Affairs shall be the President, Vice-President, and a senior representative of the Student Council elected by the Student Council and five officers of the Women's Senate. The Student Council President shall be the chairman of the Executive Committee of Student Government on Women's Affairs.

The Executive Committee of Student Government on Men's Affairs shall be the President, Vice President, and a senior representative of the Student Council elected by the Student Council and the five officers of the Men's Senate. The Student Council President shall be the Chairman of the Executive Committee of Student Government on Men's Affairs.

Duties and Responsibilities

Duties and Responsibilities of the Executive Committee of Student Government on Women's Affairs: This committee shall receive, review, and refer to the Women's Senate, with the approval of the Dean of Women, the disciplinary cases to be handled by the Women's Senate.

Duties and Responsibilities of the Executive Committee of Student Government on Men's Affairs: This committee shall receive, review, and refer to the Men's Senate, with the approval of the Assistant Dean of Men, the disciplinary cases to be handled by the Men's Senate.

Elections

Election for the Senate Members shall be held the first week in May.

Members of the Women's Senate shall be elected by the Women students of the University above the freshman level. Graduate students are ineligible to vote.

Members of the Men's Senate shall be elected by the men students of the University above the freshman level. Graduate students are ineligible to vote.

Advisers

The Dean of Women shall be adviser to the Women's Senate. The Dean of Men shall be adviser to the Men's Senate.

Policies

If any elected student cannot serve on the Senate at the time of election or later finds it necessary to become inactive—the vacancy will be filled by the person who received the next highest number of votes on the Senate election ballot.

A record of any Senate action involving discipline shall be kept in the office of the Dean of Women, the Dean of Men and the Dean of Students.

Faculty members shall refer cases recommended for Senate hearing to the Dean of Women or the Dean of Men, who will use their discretion as to whether such cases should be passed on to the Executive Committee of Student Government on Women's Affairs or the Executive Committee of Student Government on Men's Affairs.

Quorum

Twelve members shall constitute a quorum.

The Residence Hall Councils

Each residence hall has its own house organization called the Hall Council which provides for the student his first campus experience in a system of self-government based upon the principles of individual responsibility and personal honor. The Residence Hall Council entrusts to the resident a share in matters pertaining to conduct, loyalty, and honor as well as learning experiences involving gracious and creative living. The Council provides limitless opportunities for growth and development.

STUDENT ACTIVITIES

A well balanced program of activities is available to students at the University.

Admission or Participation

Admission to athletic contests, plays, concerts, lectures, voting and similar activities is by an Identification Card. Participation in other activities is arranged with the particular program director or the person in charge. Information on participation can be secured from the Office of the Dean of Students.

Securing Identification Card

An Identification Card will be issued after the completion of the student's first registration for a given year. At subsequent registration periods in that year, the Identification Card is validated in the Office of the Business Manager.

Should a student lose his Identification Card, at the beginning of the next quarter, he may secure a temporary Identification Card from the DOS office by filing the required certification form and paying a fee of one dollar ($1.00).

Identification Card Regulations

The Identification Card is not transferable. It should be carried by the student at all times.

In the event that a student is to be separated from the University, he must surrender his Identification Card to the Dean of Students.

Guest Cards

Students' guests will be admitted to University-sponsored events by special guest cards unless there is an admission fee. Guest cards may be secured from the Dean of Women or the Dean of Men.

Dress

It is the obligation of the student to know the proper dress for various occasions. The Head Resident, of each of the residence halls, Dean of Women, and the Dean of Men will assist students with matters of dress. (See "What to Wear—Where", p. 13).

When a student attends any social activity inappropriately dressed, the sponsor of the activity or person in authority may deny him admission and/or request him to leave the activity.

Types of Activities

Athletics

Varsity and intramural athletics are promoted. Teams in football, soccer, softball, baseball, field hockey, basketball, swimming, track and field and tennis engage in intramural and/or intercollegiate competition.

Convocations

Inspiring and informative convocations for students are a tradition of long standing. In addition to regular convocations there are those that feature nationally acclaimed speakers and artists.

Concerts and Recitals

The Department of Music offers a full program of concerts and recitals featuring faculty members, senior students and departmental groups.

Drama Series

Each year, the Tennessee State Players' Guild presents several outstanding plays. This and other University theatre groups give opportunity for performance in or enjoyment of the Theatre.

Film Series

Full-length feature movies are shown each Sunday afternoon in the A Building Auditorium under the auspices of the Student Council.

Lyceum Series

The most celebrated artists, speakers, orchestras, and outstanding dramatic productions are brought to the campus as features of the Lyceum Series.

Publications

The Meter is a publication of the Student Body. Through its editorial organization, the Meter Staff, it endeavors to keep the students informed of the activities of the University, and to allow them to express their ideas and opinions.

The *Tennessean,* the University yearbook, is edited by a senior who is assisted by a representative of each phase of student life. It is published under the guidance of the Department of Public Relations. The Tennessean captures the current campus scene for future classes and generations with pictures, succinct phrases and unique literary style.

The *Homecoming Bulletin* is published by the Department of Public Relations, assisted by the Office of Student Activities.

The departmental student publications include:

"The Bio-Log" published quarterly by the Biology Club.

"The Test-Tube", published monthly by the Student Affiliate Chapter of the American Chemical Society.

"Weekly Bulletin", published by the AFROTC.

Religious Experience

University religious activities include Quiet Hour, Sunday School, Sunday Morning Worship Service, and Religious Emphasis Week.

Student Elections

Students gain knowledge of the place and function of political systems in government as well as the responsibility of the individual in a democratic society during the student elections. Experience in the mechanics of voting is gained at the polls which are staffed, equipped with voting machines and operated according to established election procedures.

STUDENT ORGANIZATIONS

Participation

Participation in organizations may serve to develop special talents and skills in music, dramatics, writing and religious expression or to develop an appreciation and capacity for leadership, cooperation, and fellowship.

In making a choice of organizations, the student should consider his interests, health, scholarship, finances, and home relations.

Freshmen are urged to limit their participation in organizations and other extra-curricular activities particularly during the first quarter when numerous academic, social and other adjustments have to be made.

STUDENT ORGANIZATIONS DIRECTORY

Class Organizations

Freshman, Sophomore, Junior, Senior—These University classes are organized and at their meetings throughout the year plan social and other class programs

The Graduate Club—For graduate students

Departmental Organizations

AFROTC Drill Team ("Tiger Jets")—For outstanding cadets who possess desirable leadership potential

AFROTC Society—A social organization open to all enrolled cadets

American Chemical Society, Student Affiliate Chapter—For majors in Chemistry

American Society of Agronomy—For majors in Agriculture

Arnold Air Society—A national AFROTC organization for outstanding cadets enrolled in the AFROTC Course

Association for Childhood Education International—For Elementary Education majors

Biology Club—For Biology majors

Future Business Leaders of America—For Business Administration majors

Future Teachers of America—For Education majors

Hepermots—For Health, Physical Education and Recreation majors

Home Economics Club—For Home Economics majors

Industrial Arts Club—For Industrial Education majors

Institute of Radio Engineers—For upperclassmen majoring in Electrical Engineering, Physics or Mathematics

International Students Club

Les Amis de la France—For students of French

Los Buenos Vecinos—For students of Spanish

Mathematics Club—For majors and minors in Mathematics

Music Education National Conference, Chapter 381—National organization for majors in Music

National Technical Society—For Engineering majors

New Farmers of America—For Agriculture majors

Psychology Club—For Psychology majors

Social Science Club—For Political Science, Sociology and Social Administration majors

Student Affiliate Chapter of American Chemical Society—For Chemistry majors

Thucydidean Society—For History majors

Town Hall—An organization dedicated to the discussion of current public issues. Open to all students.

TSU Aero Tigers—For Aviation Education majors

Women's Intramural Board

Women's Athletic Association

Social Fraternities and Sororities

Alpha Phi Alpha, Beta Omicron Chapter

Kappa Alpha Psi, Alpha Theta Chapter

Phi Beta Sigma, Zeta Alpha Chapter

Omega Psi Phi, Rho Psi Chapter

Alpha Kappa Alpha, Alpha Psi Chapter

Delta Sigma Theta, Alpha Chi Chapter

Sigma Gamma Rho, Alpha Beta Chapter

Zeta Phi Beta, Epsilon Alpha Chapter

Greek Letter Pledge Clubs

Archonian Club of Zeta Phi Beta

Aurora Club of Sigma Gamma Rho

Crescent Club of Phi Beta Sigma

Ivy Leaf Club of Alpha Kappa Alpha

Lampodas Club of Omega Psi Phi

Pyramid Club of Delta Sigma Theta

Scrollers Club of Kappa Alpha Psi

Sphinx Club of Alpha Phi Alpha

Interfraternity Council—Composed of representatives of all social Greek Letter Fraternities and Sororities

Literary and Dramatic Organizations

Children's Theatre—Open to campus and community children

Literary Guild—Open to all students

Laboratory Players—Open to all students under the direction of Speech and Drama majors

TSU Players' Guild—Open to all students

Youth Theatre—Open to campus and community youth

Musical Organizations	A Cappella Choir—For Music majors
	Meistersingers—Open to all students
	String Club—Open to students and faculty members
	University Marching and Concert Bands—Open to students of music
National Honor Societies	Alpha Kappa Mu Honor Society, Phi Beta Tau Chapter—Open to students of junior classification with average of 3.3 or above
	Beta Kappa Chi Scientific Society, Xi Chapter—For outstanding students and scholars in natural sciences and mathematics
	Gamma Theta Upsilon Geography Fraternity, Alpha Beta Chapter—For outstanding students and scholars in geography
	Kappa Delta Pi Honor Society, Zeta Chi Chapter—For outstanding students and scholars in education
	Phi Mu Alpha Sinfonia, Eta Xi Chapter—Music fraternity open to outstanding students in the Department of Music
	Pi Delta Pi, Beta Omicron Chapter—For outstanding students in French
	Pi Omega Pi Fraternity, Beta Psi Chapter—For outstanding students interested in teaching business subjects
	Sigma Delta Pi, Gamma Eta Chapter—For outstanding students in Spanish
	Sigma Rho Sigma, Gamma Chapter—For future social science teachers
	Theta Alpha Phi, Epsilon Chapter—For outstanding students in French
Religious Organizations	Baptist Student Union—Campus affiliate of national organization for Baptist students
	Canterbury Club—For Episcopalian students
	Clericus—For students interested in the Ministry
	Interfaith Council
	Methodist Student Movement—For Methodist students
	Newman Club—Affiliated with national organization for Catholic students
	Student Christian Association—Campus centered fellowship of students, staff members, and faculty members of all denominations
	Westminster Fellowship—For Presbyterian students
Residence Hall Councils	Clement Hall Council
	East Hall Council
	Hale Hall Council
	Hankal Hall Council
	Watson Hall
	Veterans Hall Council
	Wilson Hall Council
	Women's Residence Center
State-City Clubs	Florida Club—For Florida students
	Memphis Club—For Memphis, Tennessee students
	Michigan Club—For Michigan students
	Texas Club—For Texas students
	Ohio Club—For Ohio students
Varsity	T Club—Composed of University Letter winners
Civic & Political	NAACP
	Young Democrats

Advisers to Student Organizations

Faculty advisers to student organizations are elected by the organizations. The four undergraduate classes, the Student Council, and the Senates have an additional adviser who is administratively appointed.

The major responsibilities of an adviser are as follows:

An adviser to an organization or class is expected to so guide the organization that all meetings and activities contribute in spirit and in expression to the wholesome development of the student and to the best interest of the University.

An adviser is responsible for assisting an organization in understanding and observing good practices relative to program planning, budgeting, keeping records, parliamentary procedures, business procedures, proper use of university facilities, and working cooperatively with related offices.

An adviser to a student organization is expected to see that the organization fulfills its responsibilities.

An adviser is expected to be present at each meeting of the organization with which he serves.

Any adviser or teacher sponsoring a trip out of Nashville must guarantee prior to departure from campus (1) that for each student written permission from the parent or guardian has been received by the Dean of Women, (2) that for each student travel insurance has been secured through the Office of Student Activities or that of the Business Manager, and (3) that if open bodies of water are located where an activity is to be held, a person holding a life saving certificate has been employed as a life guard responsible for supervision and control of water activities.

An adviser to a student organization who signs a Calendar Request Form for an activity assumes responsibility for seeing that the sponsoring organization plans, conducts, and, where appropriate, follows up the activity in keeping with the regulations and standards set by the University.

An adviser to a student organization who signs a Calendar Request Form for an activity must be present at the activity.

Eligibility for Membership

In order to be a member of a student organization, the student must be currently enrolled in the University.

Information on requirements for and procedures involved in attaining membership in specific student organizations may be obtained by contacting the president, members, or advisers of the organization. (See Directory of Student Organizations).

Eligibility for Holding Office

In order to be eligible to petition or hold an office in any student organization or activity, a student shall maintain academic and social approval as determined by the Office of the Dean of Students.

In order to remain an officer, a student shall maintain academic and social approval as determined by the Office of the Dean of Students.

No student shall hold office in any class of which he is not a member. The classification of the student shall be determined by the Dean of Admissions.

Elections

Any organization holding an election must submit in quadruplicate the results of the election to the Office of Student Activities immediately following the election. The Office of Student Activities will retain one copy and send one copy to the following offices: Dean of Students, Student Council, and Public Relations.

Use of Calendar of Events

The Office of Student Activities registers and approves all student-sponsored events and publishes weekly and monthly Calendar of Events which includes these and University-sponsored programs.

Meetings and Activities

Each organization shall, during the first week of May, submit calendar requests for meetings and activities for the ensuing year to the Office of Student Activities for approval. Each request is to be submitted in triplicate on the forms provided by the Office. If facilities in Kean Hall are requested, five copies are to be submitted.

Every calendar request for a meeting or activity must carry the signature of the president of the organization and the faculty adviser.

Student Activities

Calendar requests for meetings and activities must be filed in the Office of Student Activities at least two weeks prior to the date requested.

All meetings and activities of organizations shall be approved by the Office of Student Activities.

A faculty adviser shall be present at all meetings held by a student organization.

Cancellation of Meetings or Activities

Cancellation of approved meetings or activities should be reported by the president or chairman to the Office of Student Activities at the earliest possible date.

Financial Operations

Each organization shall designate an officer along with the advisor to be responsible for its finances. It shall be necessary to hold that officer and advisor personally responsible for the handling of money, purchases, contracts, and tickets.

The University, through the Auditing Committee for Student Organizations, maintains general supervision over the finances of student organizations. This service is provided for the purpose of securing uniformity of accounting records, establishing continuity between student business officers and their successors, and helping organizations to keep their activities on a sound business basis. All organiztaions are required to observe the regulations outlined by the Auditing Committee October, 1955.

I. Cash Receipts

A. Bank Depository

1. Each student organization receiving cash from such sources as dues, assessments, special programs, drives, taxes, etc., shall deposit in a Nashville bank in an "organization's" checking account.
2. All receipts of cash shall be deposited intact within 48 hours after collection by the treasurer.
3. The treasurer will be held personally responsible for all funds collected. It is suggested that funds collected before 9:00 p.m. on any day be deposited with the Business Manager of the University for safekeeping until it can be banked.

4. Any organization which feels that the use of a bank account is unnecessary will complete Form 1-B.A., "Justification for Not Using Bank Account" in two copies and submit immediately to the Chairman of the Auditing Committee for Student Organizations. One copy, indicating approval or disapproval, will be returned to the organization and should become a part of that organization's permanent records.

B. Receipts

1. A formal receipt shall be written for each transaction involving a receipt of funds. The duplicate receipts shall remain intact in the receipt book. (Use of unfinished receipt book may be continued). The duplicate receipt should never be removed from the book.
2. Only carbonized duplicate receipts will be recognized as authentic.
3. All spoiled, mutilated or voided receipts must be left in the receipt book.

II. Cash Disbursements

A. Checks

1. All disbursements shall be by check.
2. Use of the 'Desk pad' type of check book (8½ x 11) with prenumbered checks and stubs may be continued.
3. Each check stub is to be filled out completely when the check is prepared. (All spoiled, mutilated, or voided checks must be preserved.) Keep a running record of deposits and disbursements on the stubs of the check book.
4. The check shall carry *two* signatures, that of the Treasurer and one other person so designated by the organization in one of its regular meetings. (It is suggested that the President's signature be required in the latter case).

5. Secure invoices (receipts or other memoranda) for all purchases or expenditures, attach these to the voucher and file with paid invoices.

6. The cancelled checks, when returned from the bank, shall be attached and filed with the permanent records of the organization.

B. Vouchers

1. The Treasurer shall under no conditions write a check without first receiving a supporting voucher. (Vouchers might be obtained from the Office of Student Activities). The voucher (Form 2-D.V.) shall be duly completed and signed by the president, the secretary and at least one of the faculty advisers.

2. In the space indicated, the treasurer will insert the date, check number, amount and payee of the check when it is written.

III. Record Book

1. A bound record book should be secured large enough to accommodate minutes of meetings and membership records for at least one year.

2. It is suggested that the names of members be arranged alphabetically in this record book.

IV. Filing Records at End of Spring Quarter

All financial records of each organization (receipt book, check book, cancelled checks with bank statements, vouchers with attached invoices, and the record book containing minutes and membership records) must be submitted to the Office of the Business Manager of the University at the end of the Spring Quarter. Containers will be furnished for this purpose. The records might be obtained by the organizations at the beginning of the next following school year.

Publications

Any publication of a paper or other production by a student or a student organization which bears the name of the University and purports to issue from it must first be approved by the Office of the Dean of Students and the Publications Board.

Benefit Affairs and Soliciting Advertisements

There shall be *no* benefit affairs except those organized and supervised by the University and Community Benevolence Committee. (Adopted by the general faculty, August 20, 1947)

Student organizations may not solicit advertisements.

Fund Raising

Fund raising by student organizations is not permitted.

Selling

Selling on University property is not permitted unless permission has been granted by the Dean of Students.

How to Organize

Student groups planning to apply for recognition of a new student organization should discuss plans with the Dean of Students.

Organizational Meetings

Permission to hold preliminary meetings for purpose of drawing up a constitution should be secured.

Requests for Recognition

A request for recognition, with six copies of the constitution is to be submitted to the Office of Student Council by the organization. The request must carry the signatures of the interested students and an adviser. The Student Council will recommend the granting of or denial of the request to the Dean of Students who will act on the recommendation and inform the president of the proposed organization of the final decision.

If the request is granted, a constitution is filed in the Office of Student Activities by the organization.

Basis for Recognition

Recognition will be given by the University provided that:

1. The policies and objectives of the proposed organization are consistent with the policies and objectives of the University.

2. The proposed organization represents the interests of students and is directed by them.
3. The group has a minimum of fifteen students, unless a smaller number is consistent with the group's objectives.
4. Any proposed organization with which it may be affiliated by name or otherwise does not engage in subversive activities against the State or the United States.
5. A faculty member has agreed to act as adviser.
6. The group agrees to use the services of the Auditing Committee of Student Organizations.

Maintenance of Recognition

In order to remain on the list of officially recognized student organizations, it is required that an organization:

1. Continuously meet the initial conditions for recognition.
2. Register the names of its officers and members with the Office of Student Activities at the beginning of each quarter.
3. Report additions to membership promptly.
4. Maintain financial records in a manner satisfactory to the Auditing Committee.
5. Have any changes in organizational structure, policies, objectives, activities, or affiliations with other organizations, either local or national, approved by the Student Council before adoption.
6. Sign a certificate to function on the campus during the school year. This is to be done at the beginning of the school year. No organization is to function until this certificate is duly signed and deposited with the President of the Student Council and the Dean of Students.

GENERAL REGULATIONS GOVERNING FRATERNITIES AND SORORITIES

Article I.

Organization and Control

Fraternities and Sororities have existed at the Tennessee Agricultural and Industrial State University since 1931. They are organized under National Charter. In local matters they are recognized by the Faculty and are under the jurisdiction of the Faculty Committee on Fraternities and Sororities and of the Inter-Fraternity Council.

SECTION 1. Each Fraternity or Sorority shall have three (3) or more advisers, regular employees of the University, chosen from the graduate membership of the particular fraternity or sorority with the approval of the Office of the Dean of Students.

SECTION 2. The advisers of the Fraternity or Sorority Chapter shall be present at all meetings.

SECTION 3. The advisers of fraternities and sororities shall constitute the Faculty Committee on Fraternities and Sororities.

SECTION 4. There shall be a Pan-Hellenic Council composed of the Heads of each organization two student representatives and two faculty advisers from each National Greek Letter organization. Recommendations and actions of the group shall be referred to the Student Council.

Article II.

Rushing

SECTION 1. Rushing is to be defined as any spoken word or any action by a fraternity or sorority member or an alumnus or alumna of any fraternity or sorority represented at the University, committed with the purpose of influencing a rushee in his or her choice of fraternity or sorority.

A rushee is any non-Greek letter person who is approached by a member of a fraternity or sorority, to interest him in the organization.

SECTION 2. Rushing is not limited to any particular time of the regular University year but most rushing activities take place early in the Fall Quarter.

Article III.

Pledging

SECTION 1. Pledging will take place in the first month in the Fall Quarter.

SECTION 2. In order to become a member of a pledge club of a fraternity or sorority, a student shall meet the following requirements:

a. Certification by the Dean of Admissions of residence at the Tennessee Agricultural and Industrial State University, one quarter prior to pledging. The summer session will be counted as one quarter of the academic year provided twelve hours of academic credit have been completed. If only one term of the summer session is attended repeat courses may be substituted for those failed in the regular session. Courses in addition to the above taken in the Summer School may be averaged with grades of any quarter in the immediately preceding regular school year.

b. Certification by the Dean of Admissions of earned credit of fifteen quarter hours of work at the Tennessee Agricultural and Industrial State University.

c. Certification by the Dean of Admissions of an accumulative average of 2.0.

d. For transfer students the requirements of residence at Tennessee Agricultural and Industrial State University shall be waived, provided an official transcript is filed in the Office of the Dean of Admissions showing honorable dismissal and an accumulative average of 2.0 for fifteen quarter hours of college work.

e. A transfer student who was pledged to a fraternity or sorority at another institution on entering the Tennessee Agricultural and In-

dustrial State University may be admitted to the Pledge Club on the recommendation from his or her organization stating that he or she was a member in good standing.

f. Certification by the Business Manager that all fees and assessments owed the institution have been paid.

g. Certification by the Dean of Admissions, the Chairman of the Faculty Advisory Committee, the Dean of Men or the Dean of Women, that the student is not on scholarship or conduct probation.

h. The order of procedure for checking pledgees shall be as follows: The President of the fraternity or sorority shall submit five copies on proper forms of a list of pledgees and candidates for initiation to the Dean of Students ten days before the period set for pledging or initiation. Each organization shall present its one and final list on the set date. The lists will be sent by the Dean of Students to the Dean of Admissions, Business Manager and Chairman of the Faculty Advisory Committee. The president of fraternities and sororities concerned will then be sent by the Dean of Students the list of pledgees and candidates for initiation approved by the appropriate University officers.

Article IV.

Membership

SECTION 1. In order to become a member of a fraternity or sorority, a student shall meet the following requirements.

a. Certification by the Dean of Admissions of residence at the Tennessee Agricultural and Industrial State University for three quarters.

b. Certification by the Dean of Admissions of earned credit of forty-five quarter hours of college work.

c. Certification by the Dean of Admissions of an accumulative average of 2.25.

d. Transfer students who wish to affiliate with a fraternity or sorority shall submit an official transcript showing honorable dismissal and an accumulative average of 2.25 for forty-five quarter hours of college work. Transfer students may be initiated during the second quarter of residence at Tennessee Agricultural and Industrial State University.

e. Certification by the Business Manager that all fees and assessments have been paid in the Business Office.

f. Certification by the Dean of Admissions and the Chairman of the Faculty Advisory Committee that the student is not on scholarship or conduct probation.

g. The order of procedure for checking candidates for initiation is the same as described in Article III, Section 2, h.

SECTION 2. Each fraternity and sorority may determine the residence period in the pledge club required before initiation.

SECTION 3. Each fraternity or sorority and pledge club during the fourth week of each quarter shall furnish the Dean of Admissions, and the Dean of Students a list of chapter membership, officers and faculty advisers.

Article V.

Initiation

SECTION 1. During the Fall quarter only there shall be an initiation period for the fraternities and sororities. The period shall not fall within two weeks prior to the mid-term or final examination of the quarter.

SECTION 2. The length of the period of initiation shall not exceed eight days.

SECTION 3. Each fraternity or sorority may have one initiation period per year.

SECTION 4. The period of initiation shall have the approval of the Dean of Students.

SECTION 5. All services and activities of pledges and candidates for initiation shall be carried on in such a manner as not to interfere with college work or conduct.

BY-LAWS

Article I.

Program and Budget

SECTION 1. Each fraternal organization shall have the privilege of sponsoring on the campus educational programs planned by its national body. A tentative program of activities for the year (rushing, pledging, probation, social, educational, and other campus activities) shall be made during the first six weeks of the year and dates shall be arranged through the Office of Student Activities.

SECTION 2. Each fraternal organization shall file with the Office of the Dean of Students fifteen days before the end of the regular academic year a report of its budget for the ensuing year and expenses for the year ending.

Article II.

During each academic year there may be planned some type of inter-fraternal activity; dinner, dance, general education or cultural program.

POLICIES REGARDING ACTIVITIES SPONSORED BY STUDENT ORGANIZATIONS

Definition of Student Organization

The following policies regarding activities sponsored by student organizations were adopted by the faculty on August 15, 1917.

1. That "student organization" be officially defined as a group which has no official relationship with any other group on the campus and which functions directly through its own officers of the University Administration.

2. That no student organization be permitted to sponsor more than one activity of a given type during a regular school year, except in cases where the activity is a part of the regular Uni-

versity program, such as Sunday School and Quiet Hour.

Types of Activities

3. That student organizations be permitted to have but one affair during the year at which the services of an orchestra are used.

4. The regular University program shall take precedence over requests from student organizations.

Meetings

5. That no student organization may have more than two regular monthly meetings. Special meetings may be arranged with the faculty advisers and scheduled with the Calendar Committee.

Social Affairs

6. That affairs of a social nature be confined to Fridays, Saturdays, and Sundays.

7. That no affairs of a social nature, involving the student body as a whole, shall be scheduled within three days of mid-term examination or one week of final examination. Exceptions are governed by the Office of the Dean of Students.

Modifications

The University Administration reserves the right to make modifications to these rules and regulations at any time to protect the general welfare of the University.

Use of Cafeteria

If the cafeteria is needed, the organization must clear the date with the Office of Student Activities and then make specific arrangement with the Cafeteria Manager.

Requests for special services must be submitted on a special service form to the Cafeteria Manager forty-five days prior to date of desired service.

rams

Any type of public presentation sponsored on or off the University campus by any group, club, organization or department of the University must be previewed and approved by the Public Exercises Committee. Organizations are responsible for meeting the preview schedules arranged by the committee and following through on its recommendations.

APPENDIX

SOURCES OF INFORMATION

Academic Requirements

For information on academic requirements consult the current University catalog.

General

General information may be obtained from the Office of Dean of Students, Student Union, Room 200, Telephone CH 2-4311, Station 337; or AL 5-7122.

Official Announcements

Official announcements are made through (1) teachers, (2) official bulletin boards, (3) convocations and (4) THE METER, the official organ of the Student Body. (5)

Students are responsible for complying with announcements so circulated. Ignorance of an official announcement is no excuse for failure to comply.

A notice to report to the Office of the President, Dean of Students, Dean of Faculty, Chairman of the Faculty Advisory Committee, University Senates, Dean of School, Dean of Addmissions, Business Manager, Dean of Women, Dean of Men, or Chairman of the Faculty Advisory Committee takes precedence over all duties and is to be attended to in accordance with the statement of the Notice. A student who does not heed such a summons is subject to disciplinary action.

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Tennessee Agricultural and Industrial State University
1966-67 University Calendar

Fall Quarter 1966

September 1, Thursday	Last Date to receive Applications and transcripts for Fall Quarter
September 16-17, Friday, Saturday	Faculty and Staff Workshops
September 19-22, Monday-Thursday	Freshman Week
September 21, Wednesday, (8:00 a.m.—4:00 p.m.)	Registration for Freshmen and New Students; Undergraduate and Graduate
September 22-24, Thursday-Saturday (8:00 a.m.-4:00 p.m.)	Registration for Upperclassmen and Graduate Students
September 26, Monday	Classes Begin at 8:00 a.m.
October 4, Tuesday	Opening Convocation
November 2-3, Wednesday-Thursday	Mid-Term Examinations
November 24-26, Thursday-Saturday	Thanksgiving Holidays
December 13-17, Tuesday-Saturday	Examinations, Fall Quarter
December 17, Saturday	Christmas Recess Begins after last scheduled class

Winter Quarter 1967

December 6, 1966 Tuesday	Last Date to receive Applications and transcripts for Winter Quarter
January 2, Monday	Registration, Winter Quarter
January 3, Tuesday	Classes Begin at 8:00 a.m.
February 7-8, Tuesday-Wednesday	Mid-Term Examinations
March 10-15, Friday-Wednesday	Examinations, Winter Quarter
March 16-18, Thursday-Saturday	Spring Recess

Spring Quarter 1967

February 21, Tuesday	Last Date to receive Applications and transcripts for Spring Quarter
March 20, Monday	Registration, Spring Quarter
March 21, Tuesday	Classes Begin at 8:00 a.m.
April 26-27, Wednesday-Thursday	Mid-Term Examinations
May 29-June 1, Monday-Thursday	Examinations, Spring Quarter
June 4, Sunday	Baccalaureate
June 5, Monday	Commencement

Summer Quarter 1967

First Term

23, Tuesday	Last Date to receive Applications and transcripts for First Term
12, Monday	Registration
13, Tuesday	Classes Begin at 8:00 a.m.
4, Monday	Holiday
14-15, Friday-Saturday	Examinations First Six Weeks

Second Term

27, Tuesday	Last Date to receive Applications and transcripts for Second Term
17, Monday	Registration
18, Tuesday	Classes Begin at 8:00 a.m.
ust 17-18, Thursday-Friday	Examinations Second Six Weeks
ust 20, Sunday	Baccalaureate-Commencement Exercises

1966 FOOTBALL SCHEDULE

HOME GAMES

W. J. Hale Stadium

tober 1	Texas Southern University—7:30 P.M.
tober 29	Southern University—7:30 P.M.
vember 5	Morris Brown College—2:00 P.M.
vember 24	Kentucky State College (Homecoming)—2:00 P.M.

AWAY

ptember 24	North Carolina A&T—1:30 P.M.
tober 8	Grambling College—7:30 P.M.
tober 22	Florida A&M University—2:00 P.M.
vember 12	Lincoln University—2:00 P.M.
vember 19	Allen University—8:00 P.M.

SCHEDULE OF LYCEUM ATTRACTIONS

1966 - 1967

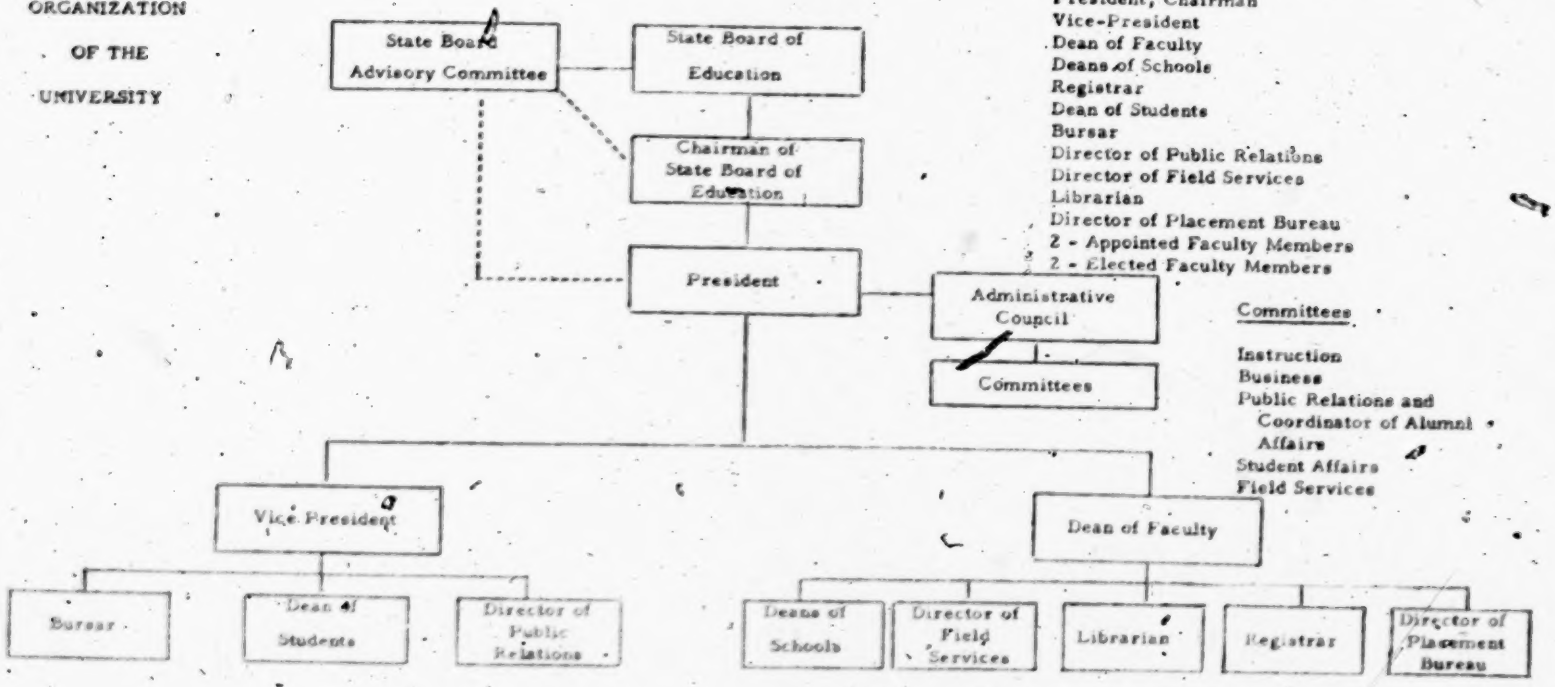
FALL:	The Camerata Chamber Singers with Eden and Tamir, Duo-Pianists	22 October 1966 Kean Hall 8:15 p.m.
WINTER:	Tomas Vasary, Pianist	14 February 1967 Kean Hall 8:15 p.m.
SPRING:	The Goldovsky Grand Opera Theater "Rigoletto" by Verdi	10 March 1967 Kean Hall 8:15 p.m.

ABBREVIATIONS OF BUILDINGS AND AREAS ON THE CAMPUS

A	Administration Building
Alu	Alumni Building
B L	Martha M. Brown, Memorial Library
B R	Band Room
Chem.	Chemistry Building
Ed.	Education Building
F S	Farm Shop
F H	Field House
G H	Greenhouse
H C	Health Center
H	Harned Hall
H H B	Hale Hall Basement
H P	Heating Plant
I	Industrial Building
K H	Henry Arthur Kean Hall
L H	W. W. Lawson Building
M B	Mechanics Building
Mc (E)	Jim Nance McCord Building (Engineering)
R H	Recreation Hall
R H B	Recreation Hall Basement
S U	Student Union
S A	Swine Area
W-H C	Watson Hall Center
W	Women's Building
W H	Wilson Hall
W R C	Women's Residence Center
P B	Frank A. Young Poultry Building

TENNESSEE A. AND I. STATE UNIVERSITY
Nashville 8, Tennessee

ADMINISTRATIVE ORGANIZATION OF THE UNIVERSITY



Members of Administrative Council

President, Chairman
Vice-President
Dean of Faculty
Deans of Schools
Registrar
Dean of Students
Bursar
Director of Public Relations
Director of Field Services
Librarian
Director of Placement Bureau
2 - Appointed Faculty Members
2 - Elected Faculty Members

Committees

Instruction
Business
Public Relations and Coordinator of Alumni Affairs
Student Affairs
Field Services

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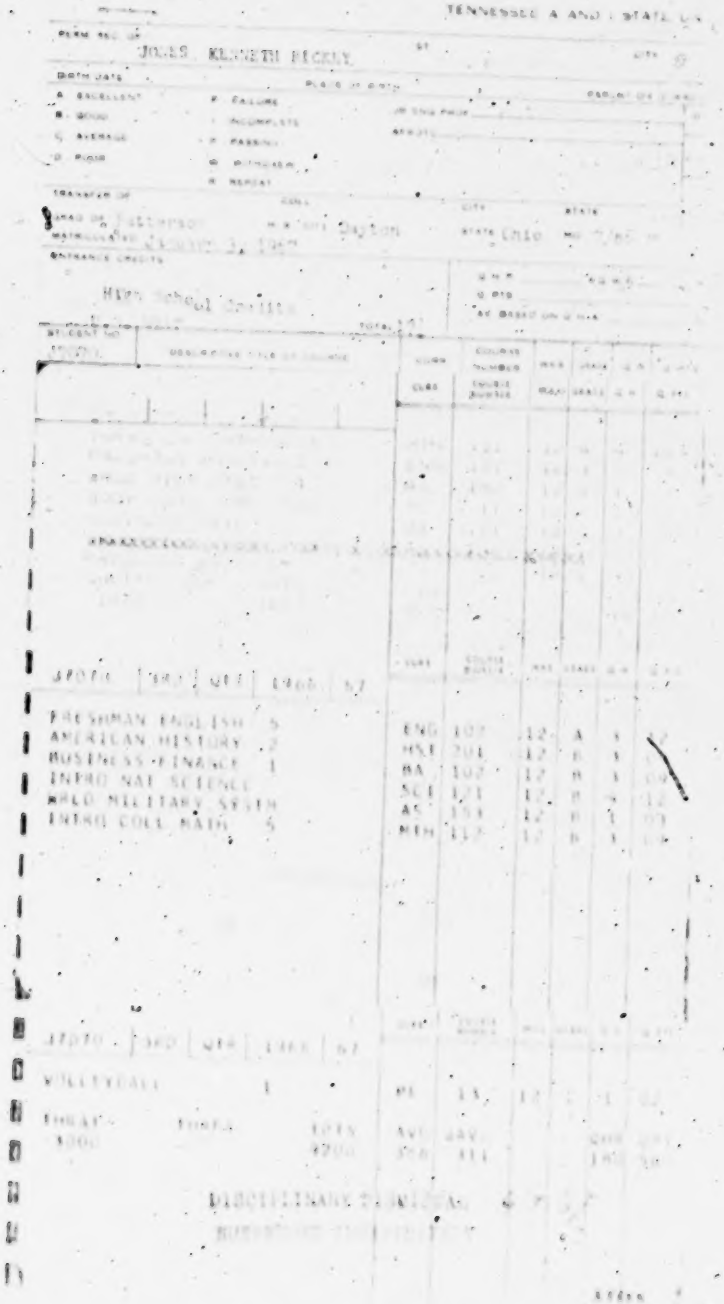
EXHIBIT No. 33

Case 4887 Filed Oct. 17, 1969
By Guy W. Cooper, DC



IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE NASHVILLE DIVISION

Civil No. 4887

[File Endorsement Omitted in Printing]

KENNETH R. JONES, FREDERICK BROOKS and JAMES MICKEY BOOTH, PLAINTIFFS

vs.

THE STATE BOARD OF EDUCATION OF AND FOR THE STATE OF TENNESSEE, ET AL., DEFENDANTS

ORDER DENYING PRELIMINARY INJUNCTION—
Entered October 23, 1967

This action was commenced by the plaintiffs Kenneth R. Jones, Frederick Brooks and James Mickey Booth filing their complaint on behalf of themselves and as a class action on behalf of others similarly situated. The plaintiffs herein seek a preliminary and permanent injunction against Tennessee A. & I. State University, the Faculty Advisory Committee of said University and other state and university officials and agencies, enjoining these defendants from interfering with the enjoyment by plaintiffs of certain of their constitutionally protected rights and directing the plaintiffs' reinstatement at said University.

In addition, the plaintiffs filed a motion for a temporary restraining order, requiring that they be immediately reinstated as students at the University pending the hearing upon the application for a preliminary injunction. This motion was denied by order of this Court on October 4, 1967.

This cause came on to be heard on October 16, 17 and 18, 1967, in open court on the complaint and answer. By agreement of all parties, the trial of the action on the merits was advanced and consolidated with the hearing on plaintiffs' motion for a preliminary injunction. This hearing thus became a final hearing upon the merits of the action and upon plaintiffs' application for a permanent injunction.

Upon consideration of the complaint and answer, and after hearing oral evidence and arguments of counsel, the Court concludes as follows: That the complaint, on its face, shows that plaintiffs were given a hearing by the defendant Faculty Advisory Committee of the University at which they were represented by counsel. As a result of this hearing, the Committee entered its formal "Report of Findings and Decision," setting forth its action against the plaintiffs and reasons therefor. The evidence offered at the hearing raised unique and important issues of law and fact concerning these hearings and the rights of students who are subject to severe disciplinary action by state supported colleges and universities. These issues can best be determined only after thorough study of the entire record and upon submission of briefs by counsel for the parties.

The Court is of the opinion that the action of the University authorities in disciplining the plaintiffs should not be interfered with by the injunctive processes of a federal court, pending the final determination of the issues on the merits.

It is, therefore, ORDERED and ADJUDGED:

(1) That the plaintiffs' application for a preliminary injunction to require their immediate reinstatement and enrollment at Tennessee A. & I. State University is and the same is, hereby denied.

(2) That the plaintiffs' application for a permanent injunction for the same purpose is taken under advisement by the Court.

(3) Counsel for the parties will file simultaneous briefs, including proposed findings of fact and conclusion of law, within thirty days following entry of this order, with an additional 10 days for the filing of reply briefs.

William E. Miller
Chief Judge
United States District Court

Approved for Entry:

L. T. Caswell, Jr.
One of Plaintiffs' Attorneys

Thomas E. Fox
Assistant Attorney General
One of Defendants' Attorneys

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

Civil No. 4887

(File Endorsement Omitted in Printing)

KENNETH R. JONES, FREDERICK BROOKS and JAMES MICKEY BOOTH, PLAINTIFFS

vs.

THE STATE BOARD OF EDUCATION OF AND FOR THE STATE OF TENNESSEE, ET AL., DEFENDANTS

ORDER—Entered November 22, 1967

This cause came to be heard in open court on October 16, 17 and 18, 1967 upon plaintiffs' motion for a preliminary injunction. By agreement of all parties, the trial of the action on the merits was advanced and consolidated with the hearing for a preliminary injunction.

Upon consideration of the complaint and answer, and after hearing oral evidence and arguments of counsel for all parties, the Court entered an order denying plaintiffs' application for a preliminary injunction and took under advisement plaintiffs' application for a permanent injunction. With consent of the parties, the Court set November 22, 1967 as the date for the parties to file simultaneous briefs, including proposed findings of fact and conclusions of law.

Upon motion of counsel for plaintiffs, the parties have agreed to extend the time for the simultaneous filing of briefs by a period of twenty days, with reply briefs due 10 days thereafter.

It is, therefore, ORDERED and ADJUDGED:

(1) That counsel for the parties will have an additional 20 days from November 22, 1967, in which to file simultaneous briefs, including proposed findings of fact

and conclusions of law, with reply briefs due 10 days thereafter.

s William E. Miller
Chief Judge

Approved for Entry:

s I. T. Creswell, Jr.
One of Plaintiffs' Attorneys

s Thomas E. Fox
Assistant Attorney General
One of Defendants' Attorneys

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE NASHVILLE DIVISION

Civil No. 4887

[File Endorsement Omitted in Printing]

KENNETH R. JONES, ET AL., PLAINTIFFS

v.

THE STATE BOARD OF EDUCATION OF AND FOR THE STATE OF TENNESSEE, ET AL., DEFENDANTS

OPINION—Entered January 18, 1968

In this action the plaintiffs, Kenneth R. Jones, James Mickey Booth, and Frederick Brooks, filed their complaint on behalf of themselves and as a class action on behalf of others similarly situated, against the Tennessee State Board of Education, Tennessee A. & I. State University, the Faculty Advisory Committee of said University, and other state and university officials and agencies, invoking the jurisdiction of the Court under 28 U.S.C.A. §§ 1331 and 1343 and under the First, Fifth, and Fourteenth Amendments to the United States Constitution. Tennessee A. & I. State University (hereinafter University) is a state supported land grant college, originally established as an institution for higher learning for members of the Negro race. Today the institution still consists primarily of Negro students, teachers, and administrators.

Plaintiffs contend that they have been wrongfully suspended or expelled from the University and that they will suffer irreparable injury unless they are readmitted. In their complaint plaintiffs make a two-pronged attack upon the action of the Faculty Advisory Committee (hereinafter F.A.C.) in ordering their indefinite suspension. First, the action of the F.A.C. is attacked on procedural grounds, it being alleged that the F.A.C. in making charges against plaintiffs and in conducting hearings de-

prived the plaintiffs of due process of law and of equal protection of the law. Also it is alleged that the action was taken to discriminatorily punish the plaintiffs in the exercise of their First Amendment freedoms. The relief sought is a permanent injunction directing the plaintiffs' reinstatement and enjoining the defendants from interfering with the enjoyment by plaintiffs of their constitutionally protected rights.

The defendants in their answer deny that the plaintiffs were dismissed from the University as a result of plaintiffs engaging in activities protected by the First Amendment. The defendants further deny that the PAC acted in any manner which would deprive the plaintiffs of due process of law or equal protection of the law guaranteed by the Fourteenth Amendment.

The action was heard on its merits before the Court on October 30th, 1967, and from the extensive proof the controlling facts appear without serious conflict. At the University the body having responsibility for imposing severe discipline is the PAC composed of nine faculty members and administrators. On or about June 8, 1967, the PAC sent letters to approximately 40 students including the three named plaintiffs, in which each student was informed that he had been charged to explain his education at the University and stating that an explanatory letter would follow. It is the policy of the University and the PAC to review the record of each student at the end of each school year. The records of students who received the letters here those who had been recommended for disciplinary action during the previous school year by persons in authority.

On June 27, 1967, the explanatory letters were sent informing each of the several students of his indefinite suspension specifying the reason for the suspension in each particular case, and informing each student that he would be allowed a hearing before the PAC at [illegible] on July 25, 1967, at which time [illegible] should not be taken. Under PAC [illegible] and receive a request for a hearing from a student, the suspension was to be considered final.

decree were not enrolled. A verbatim transcript of the proceedings was made, and the plaintiffs' attorney actively participated in all hearings. At each session the entire F.A.C. was present. The University was represented by the Honorable Robert H. Roberts and the Honorable Robert F. Hedgepath, Assistants to the Tennessee State Attorney General.

In the original June 21 letter sent to the seventy University students, plaintiff Kenneth Jones was charged as follows:

> Involved in room-on-plate incident in cafeteria in an alleged attempt to discredit cafeteria workers, fraud and conspiracy. Participated in riot.

The September 14 specification of charges against Jones was a much longer statement:

> You are charged with conduct unbefitting a University student in that during the school year you created a disturbance in the cafeteria located within John R. Elliott Hall. During that time a "food" which obviously had not been processed through the kitchen was said to have been found in some food served to one of your fellow students. Your actions on that occasion evidenced a disrespect for University authority.
>
> You are charged with distributing literature and soliciting students, all of which was designed to foment the registration at the University for the Fall Quarter 1961. This occurred during the summer of 1961.
>
> You are charged with having been recently arrested by the Nashville Metropolitan Police Department at Fisk[illegible] Avenue and Clinton Road upon a charge of disorderly conduct. Pursuant to that arrest you were convicted and fined, which is the [illegible] of the Metropolitan City Court.
>
> You are charged with continuous disrespect for University authority all of which is a violation of [illegible] Student Handbook, Discipline and Honor Codes, Chapter 10 and 16 and Chapter 3, Conduct, page 11.

The F.A.C., following Jones' hearing, made an explicit finding only on the second of the four charges. The report of the F.A.C. states:

> We, the Committee find that Mr. Jones has seized upon the opportunity on different occasions to promote unrest on the campus by such actions as distributing literature designed for that purpose.

In ordering Jones' indefinite suspension the F.A.C. also made the following general finding:

> We have found from the evidence presented that the actions of Mr. Jones did constitute violations of the University's regulations governing student conduct and behavior. Mr. Jones has not demonstrated a willingness to observe the minimum standards of propriety in conduct required here.

The June 21 letter which plaintiff Heath received charged as follows:

> Arrested in raid on 1920 Jefferson Street. Charged with State warrants for inciting to riot. Printed or caused to be printed and passed out inflammatory papers that carried your name. Newspaper accounts published story revealing immorality on your part.

The September 11 specification of charges against Heath stated:

> You are charged with continually disrupting fellow students in their pursuit of study. Incidents have occurred within the University complex, namely the theater, etc.
>
> You are charged with having participated in the printing, writing, and distribution of materials of a disturbing nature designed to interfere with the orderly University life.
>
> You are charged with having been seen by officers of the Metropolitan Police Department in bed with a female.

You are charged with having been disrespectful toward University authority in that on April 28, 1967 during a meeting of the student body for the purpose of nominating officers, you disrupted said meeting by directing your speech against said faculty members and administrative officials of the University.

You are charged with having been accused on April 12, 1967 by a fellow student, William Jackson, of having participated in a rock throwing incident on the University campus. That accusation was made in your presence at which time you refused to deny your participation.

You are charged with the unauthorized entry of a building on the University campus at which time you participated in the meeting of a certain student organization, namely, Student Representative Association, after that organization had been refused recognition by the University officials.

You are charged with continuous disrespect for the authority of the University officials, all of which is in violation of Chapter 4, Student-Handbook, published by the Tennessee A. & I. State University, "Discipline and Honor," pages 17 and 18, and Chapter 3 of the Student Handbook, "Conduct," page 11.

In ordering the indefinite suspension of Booth, the [illegible] made the following findings on the charges:

We, the Committee find that Mr. Booth was arrested by officers of the Metropolitan Police and at the time was found in bed with a young woman. Because of the publicity given this deplorable incident he has tainted the reputation of this Institution and its students. He has abused our literature and speech and dressed himself in such a manner particularly in and about the City, all calculated to embarrass and disturb the other students. On April 28, 1967 he did disrupt a meeting of the student body and showed great disrespect for officials of the University.

The June 21 letter which plaintiff Brooks received charged as follows:

> Abusive language to faculty and administration. Public drunkenness. Participated in riot during month of April, 1967.

The September 14 specification of charges against Brooks stated:

> You are charged with continually showing disrespect for University authority. You are charged with having led a group on April 12, 1967 into Kean Hall at which time a meeting was under way between University officials and students. This meeting was being conducted for the purpose of discussing grievances which the students had presented to the University officials on the previous day. Upon your arrival, you and others created a disturbance through loud talking and other activities which caused the meeting to be disrupted.
>
> You are charged with illegally entering a building at the University for the purpose of conducting a meeting of a student group known as the Student Representative Association, although that association had been denied recognition by University officials.
>
> You are charged with distributing literature during the Summer of 1967 and of soliciting students, all of which was aimed at organizing a boycott of the registration of students for the Fall Quarter of 1967.
>
> You are charged with having made a verbal assault upon the President of the University during the school year 1966-1967, at which time you called him names which are not ordinarily considered proper in discussions between the President of a University and one of his students.
>
> You are charged with having made a verbal assault upon University officials on April 12, 1967 to such a degree that other students reacted in favor of the University official.

> You are charged with continuously showing disrespect for University authority, all of which is in violation of Chapter I of the Student Handbook published by the Tennessee A. & I. State University, "Discipline and Honor," pages 17 and 18, and Chapter 3, "Conduct," page 11.

In ordering the indefinite suspension of Brooks, the F.A.C. made the following findings on the charges:

> We, the Committee find that Mr. Brooks has on at least two occasions treated the President of this Institution with gross disrespect. When on one of these occasions he was admonished by the Executive Assistants to the President concerning such disrespectful attitude, he said in effect, "Who ever heard of respect in a revolution." He was at the front of a small group that invaded a meeting between student and faculty discussing grievances the student had presented to school officials. His conduct there resulted in disrupting an otherwise orderly meeting to the point it could not be continued, showing gross disrespect, both to students and officials at the University.

In ordering the indefinite suspension of plaintiffs Jones, Heath and Brooks, the F.A.C. at the same time ruled on the cases of Calvin Connor and Hubert Butler, two other University students who were also represented by Crowell throughout the period of negotiation with the F.A.C. Since Butler did not desire at the time to continue his education at the University, the F.A.C. ruled that the issues involved in his case were moot. After considering the matters presented in the case of Calvin Connor, the F.A.C. recommended that he be allowed to continue his education at the University.

In their complaint plaintiffs have attempted to make this a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure. The facts of the case indicate that of the seventy students who received the June 21 notice of indefinite suspension twenty-eight notified the F.A.C. that they wanted to show cause why this action

should not be taken. The F.A.C. agreed on various reasons not to suspend twenty-two of these students. This left six students, including the three plaintiffs against whom the F.A.C. did take disciplinary action. In order to maintain a class action Rule 23 requires, among other things, that the class be so numerous that the joinder of all members is impracticable. The questions of law and fact in this case apply only to the plaintiffs and possibly to three other persons. Clearly the presence of three additional persons does not constitute a class so numerous that joinder of them in this suit would be impracticable. *Brooks v. Beyer*, 274 F. Supp. 538 (M.D. Tenn. 1967). Since a vital prerequisite of Rule 23 is not present, a class action may not be maintained in this case.

The basic issue is whether the University authorities in the exercise of their power to regulate student conduct have deprived the plaintiffs of constitutionally protected rights. The principal contention of the plaintiffs is that they were denied due process of law.

The right to due process of law, guaranteed by the Fourteenth Amendment, requires, among other things, that they received be granted adequate and timely notice of the charges against him, *Escoe v. Zerbst*, 295 U.S. 490 (1935), a hearing, *Powell v. Alabama*, 287 U.S. 45 (1932), before a fair and impartial tribunal, *In re Murchison*, 349 U.S. 133 (1955), and an opportunity to produce evidence in his own behalf. *Anthony v. United States*, 208 U.S. 358 (1908).

The leading case involving the application of these basic principles to a disciplinary proceeding complicated by a state supported educational institution is *Dixon v. Alabama State Board of Education*, 294 F.2d 150 (5th Cir. 1961), cert. denied, 368 U.S. 930. The plaintiffs there had been expelled from school for participating in civil rights demonstrations. Prior to expulsion the school authorities had not definitely specified the conduct which would form the basis for expulsion. The court held that the process of law requires notice and some opportunity for a hearing before a student at a tax sup-

ported college may be expelled for misconduct. The court set forth the following standards:

> The notice should contain a statement of the specific charges and grounds which, if proven, would justify expulsion under the regulations of the Board of Education. The nature of the hearing should vary depending upon the circumstances of the particular case. The case before us requires something more than an informal interview with an administrative authority of the college. By its nature, a charge of misconduct, as opposed to failure to meet the scholastic standards of the college, depends upon a collection of the facts concerning the charged misconduct, easily colored by the point of view of the witnesses. In such circumstances, a hearing which gives the Board or the administrative authorities of the college an opportunity to hear both sides in considerable detail is best suited to protect the rights of all involved. This is not to imply that a full-dress judicial hearing, with the right to cross-examine witnesses, is required. Such a hearing, with the attending publicity and disturbance of college activities, might be detrimental to the college's educational atmosphere and impracticable to carry out. Nevertheless, the rudiments of an adversary proceeding may be preserved without encroaching upon the interests of the college. In the instant case, the student should be given the names of the witnesses against him and an oral or written report on the facts to which each witness testifies. He should also be given an opportunity to present to the Board, or at least to an administrative official of the college, his own defense against the charges and to produce either oral testimony or written affidavits of witnesses in his behalf. If the hearing is not before the Board directly, the results and findings of the hearing should be presented in a report open to the student's inspection. If these rudimentary elements of fair play are followed in a case of misconduct of this gravity, we feel that the requirements of the process of law will have been fulfilled.

A similar problem was presented to this Court in *Knight v. State Board of Education*, 200 F.Supp. 174 (M.D. Tenn. 1961). There the plaintiffs challenged their suspensions from Tennessee A. & I. State University, the same school involved in the instant case, following their participation in Mississippi freedom rides. The plaintiffs alleged that their suspensions were discriminatory and arbitrary, and without notice or opportunity to be heard and that the suspension orders were issued as a punitive or retaliatory measure for having participated in what were First Amendment protected activities. The suspensions were ordered pursuant to a State Board of Education regulation which provided for dismissal of a student who is arrested and convicted on charges involving personal misconduct. The plaintiffs were suspended after an ex parte hearing without notice and prior to the disposition of all their cases in the Mississippi courts.

This Court held that the plaintiffs' claim to a deprivation of procedural due process was well taken, but the claim that the disciplinary action was dictated as a retaliatory measure was dismissed as without merit. The Court stated that "upon the present record the rudiments of fair play and the requirements of due process vested in the plaintiffs the right to be informed or advised of the charges to be made against them and to be afforded an opportunity to present their side of the case before such drastic disciplinary action was invoked by the university authorities."

In *Dixon v. Alabama St. Bd. of Education*, 294 F.Supp. 150 (M.D. Ala. 1965), the plaintiffs had been judged guilty of contempt of a Florida court, and without receiving prior notice they were brought before the school disciplinary committee. The only charge against them was the contempt conviction in the Florida court. The plaintiffs were for the first time advised of this charge upon appearing before the committee. The court held that the plaintiffs had not been denied due process. The disciplinary committee was duly established and organized to standard, well-defined procedure. There was

notice to each of these plaintiffs, the charges were made explicit, and each was afforded full opportunity to be heard, and, in fact, was heard to the point where each said he had nothing more to say." The court found that the basic requirements of procedural fairness had been met.

The rule of *Dixon*, *Knight*, and *Due* that due process of law requires notice and some opportunity for a hearing before a student at a tax supported college or university may be expelled for misconduct has now become well established. *Wasson v. Trowbridge*, 382 F.2d 807 (2d Cir. 1967); *Woods v. Wright*, 334 F.2d 369 (5th Cir. 1964); *Madera v. Board of Education of City of New York*, 267 F.Supp. 356 (S.D. N.Y. 1967). The Tennessee Supreme Court in a much earlier case held that a student at a state supported school may not be expelled without notice and a fair hearing. *State ex rel. Sherman v. Hyman*, 180 Tenn. 99, 171 S.W.2d 822 (1942), cert. denied 319 U.S. 748. Of course, provided the procedural requirements are met, it is always within the province of school authorities to prohibit by regulations acts calculated to undermine school discipline and to punish when these regulations have been violated. *Blackwell v. Issaquena County Board of Education*, 363 F.2d 749 (5th Cir. 1966). Cf. *Burnside v. Byars*, 363 F.2d 744 (5th Cir. 1966).

As indicated above, this Court in the *Knight* case adopted and applied the rule of the *Dixon* case to the effect that due process of law requires notice and some opportunity for a hearing before a student at a tax supported university may be expelled for misconduct. The question in this case concerns the application of this rule and the extent of the notice and hearing required to satisfy due process standards.

In asserting that they were denied due process, the plaintiffs raise a number of contentions. They assert that they were not accorded due process when in the September 14 specifications of charges the F.A.C. made substitutions and additions of which the plaintiffs were not informed in the June 21 letter. Further, it is contended that some of the additional charges arose out of

taking disciplinary action afforded the students concerned no notice or opportunity for a hearing.

Further, the plaintiffs were in no way deprived of due process of law because the September 14 specifications of charges included substitutions and additions of which the plaintiffs had not been informed in the June 21 letter, as well as charges arising out of events subsequent to the June 21 letter. As stated above, the September 14 specifications of charges constituted adequate and timely notice to the plaintiffs. Therefore, it makes no difference that the plaintiffs had not been previously informed of these charges in the June 21 letter or on some other occasion. Nor is it material that some of the additional charges arose out of events occurring subsequent to the June 21 letter. If the F.A.C. had reason to believe that the plaintiffs between June 21 and September 14 had engaged in activities for which they should be subjected to discipline, it was not a denial of fundamental fairness for the F.A.C. to include these accusations in the September 14 specifications of charges.

With regard to the hearings of September 16, 18, and 20, the facts of this case clearly indicate that the F.A.C. heard all the evidence in considerable detail and that the rudiments of an adversary proceeding were preserved. The facts do not support the plaintiffs' contention that they were denied due process because the F.A.C. was biased or had prejudged the case against them. On the contrary, the F.A.C. not only heard the testimony of plaintiffs and their witnesses, but allowed plaintiffs' counsel to cross-examine witnesses testifying against the plaintiffs. The plaintiffs' hearings were more extensive and more consideration was given to the evidence and charges than the minimum standards set forth in *Dixon* and *Knight* and other cases would exact to satisfy the requirements of due process under the Fourteenth Amendment. At the hearing in this court, University administrators testified that they had attempted throughout the school year to work with these sudents to get them on the proper academic path. It was only after the F.A.C. unanimously agreed that rehabilitation was impossible that they were indefinitely suspended.

Nor does the Court believe that the fact that two members of the F.A.C. testified against the plaintiffs is sufficient in itself to constitute a denial of fundamental fairness. To support their contention that a fair hearing was denied because of this commingling of prosecutorial and adjudicatory functions, the plaintiffs rely on the recent case of *Wasson* v. *Trowbridge, supra,* in which the plaintiff Wasson sought an injunction restraining his dismissal from the Merchant Marine Academy. One contention raised by *Wasson* was that members of the panel which disciplined him had participated in the investigation against him. This was contrary to the regulations of the Academy. In remanding the case to the District Court for a hearing, which the District Court had refused to grant, the Second Circuit held "that Wasson was entitled to show that members of the panel had had such prior contact that they could be presumed to have been biased."

In this case, unlike *Wasson*, the Court has held a full evidentiary hearing affording the plaintiffs every opportunity to show that members of the F.A.C. were biased against them. The record demonstrates clearly, however, that there was no bias or prejudice on the part of the F.A.C. It has been shown that the F.A.C. sought to reach decisions commensurate with the best interests of both the plaintiffs and the University. The members of the F.A.C., because of their positions, know more about the general activities and events at the University than persons not in positions of authority and responsibility. It is of course the duty of a school administration to be aware of developments at the school and to attempt to solve problems as they arise. There is no violation of procedural due process when a member of a disciplinary body at a university sits on a case after he has shared with other members information concerning the facts of a particular incident. See *Trade Comm'n.* v. *Trade Institute,* 333 U.S. 683 (1948). This limited combination by a school administrative body of prosecutorial and adjudicatory functions is not fundamentally unfair in the absence of a showing of other circumstances, such as malice or personal interest in the outcome of a case.

The Court concurs in the plaintiffs' contention that the findings of the F.A.C. should be set aside if they were not supported by substantial evidence. It would not be consistent with procedural fairness for the Court to sustain findings of a school disciplinary body found to be arbitrary and capricious and not based on substantial evidence. *United States* v. *Bianchi & Co.*, 373 U.S. 709 (1963); *Peoples Bank of Trenton* v. *Saxon*, 373 F. 2d 185 (6th Cir. 1967).

There is, however, substantial evidence in the transcript of the hearings before the F.A.C., introduced into evidence in this court, to support the findings of the F.A.C. against each of the three plaintiffs. With regard to plaintiff Jones, the F.A.C. found that he distributed literature designed to promote unrest on campus. At the hearing before the F.A.C. Mrs. Knight, a cafeteria worker, and Dr. Davis, President of the University, both testified that Jones had passed out a piece of literature signed "SNCC," advocating a student boycott of the University's fall registration. President Davis stated that Jones gave him this literature personally and that he had at least fifty copies in his possesion when he did so. Mrs. Knight was able to identify positively this particular document.

The findings of the F.A.C. against plaintiff Booth were that Booth had been arrested and found in bed with a young woman, that he passed out literature and talked and was dressed in such a manner around the library as to disturb other students, and that he had disrupted a meeting of the student body and demonstrated gross disrespect for University officials. At the F.A.C. hearing President Davis testified that he had on numerous occasions seen Booth disrupting study in the library by talking and wearing white overalls covered with drawings. Miss Bessie Kean, assistant librarian, testified that she had seen Booth in the library building barefooted and wearing overalls and that he had on one occasion threatened to "tear up this damn place." President Davis also testified that at an April 28 nominating convention at the University, Booth, while making a nominating speech, turned and pointed to members of the administration who

were present on the rostrum and referred to each of them as "Uncle Tom" and concluded by referring to President Davis himself as "Super Tom." At the request of Booth's attorney, the F.A.C. did not delve into the charge concerning the bed incident because of the presence of reporters at the hearing. The F.A.C. did have in its possession, however, a portion of a transcript from a court proceeding from which the F.A.C. could have inferred that the bed incident did in fact occur.

The findings of the F.A.C. against plaintiff Brooks were that he had on two occasions treated the President of the University with gross disrespect, and that he had disrupted a meeting between faculty and students to such an extent that it could not be continued. Before the F.A.C. President Davis testified that at an April 12 student grievance meeting at the University, Brooks led a group of other students in completely disrupting the meeting and stated to President Davis, "Man we didn't come here to listen to your lies and empty promises. We came here to eliminate you and tear this joint down." Dean Sawyer at the same hearing testified that he was a witness to this occurrence and that when he told Brooks he should be more respectful toward University administrators, Brooks replied, "Who ever heard of respect in a revolution?" President Davis testified further that upon receiving a message of a death in Brooks' family, he called Brooks to come to his home in order that he might deliver this message to him. When he arrived, Brooks said, "Man, do you have a message for me?" President Davis then delivered the message to Brooks and told him he knew where he could obtain bus fare home. Brooks replied, "Hell, man, I don't want any bus fare. I travel by plane. I want you to give me a hundred and fifty dollars." At that point Brooks walked toward President Davis and said with pronounced anger, "Hell, man, do I get the hundred and fifty dollars, or don't I?" Dean Payne testified that he was a witness to this event.

As already stated, the Court is of the opinion that this evidence was more than sufficient to support each of the findings of the F.A.C. There was, of course, much

other evidence presented at the school hearings concerning the other charges. Evidently the F.A.C. found this evidence insufficient or did not believe it necessary to make a decision on the other charges, or it may have accepted the plaintiffs' explanations of the other charges. This is a further indication that the F.A.C. was not arbitrary or capricious in its action and that it acted in a fair manner at all times.

In their attack upon the findings of the F.A.C., the plaintiffs also contend that the regulations in the University Student Handbook are unconstitutionally vague. The charges against the plaintiffs and the findings of the F.A.C. were stated by the F.A.C. to be in violation of three University regulations: Those prohibiting (1) Disrespect for University authority; (2) Any act in violation of city, county, state, or federal law; and (3) Any other infractions of standards of conduct that require severe disciplinary action. It is these three regulations which the plaintiffs attack.

The Court is of the opinion that no constitutional right of the plaintiffs has been infringed because disciplinary action was taken against them pursuant to these three regulations. Plaintiffs have cited several cases to the effect that "a law forbidding or requiring conduct in terms so vague that men of intelligence must necessarily guess at its meaning and differ as to its application violates due process of law." *Baggett* v. *Bullitt*, 377 U.S. 360, 366-67 (1964). The Court does not quarrel with this well established rule of law but believes that it is inapposite in this case. The plaintiffs here are not attacking a state statute. Rather, the attack is upon student regulations found in a university handbook. No case is cited to this Court in which an attack upon a student regulation as being unconstitutionally vague has been sustained. To fulfill its function of imparting knowledge, a university must of course maintain order on its campus and exclude therefrom those who are detrimental to its well being. A university has inherent general power to maintain order and to formulate and enforce reasonable rules of student conduct. *Goldberg* v. *Regents of University of California*, 57 Cal. Rep. 463

(C.A. 1st Dist. 1967). University regulations for students, because of the very nature of the institution and its goals and purposes, should not be tested by the same requirements of specificity as are state statutes.

Finally, under their contention that they have been denied due process, the plaintiffs assert that they were in fact expelled without a hearing and that when hearings were actually held, the F.A.C. was considering whether to "readmit" plaintiffs. The plaintiffs make much of the fact that the announced purpose of the F.A.C. in holding the hearings was stated as being whether to "readmit" plaintiffs and that, therefore, the burden of proof was placed upon the plaintiffs to convince the F.A.C. that they should be readmitted.

The objective of the hearings, as stated in the June 21 letters, was to provide the plaintiffs an opportunity to show cause why the action taken against them by the F.A.C. should not be made final. There was no greater burden upon them than there would have been had the University postponed any form of disciplinary action until after formal hearings. In either case the purpose of the hearing is to determine whether the charges are true. Disciplinary proceedings conducted by an educational institution are not to be tested according to the niceties of procedure required in a court of law. Inquiry into the technicalities governing burden of proof in civil or criminal trials is, therefore, irrelevant. This phase of the plaintiffs' argument resolves itself basically into an unfounded argument of semantics brought about by the use of the word "readmit" by the F.A.C. In an administrative proceeding the "demands of due process do not require a hearing at the initial stage or at any particular point or at more than one point . . . so long as the requisite hearing is held before the final order becomes effective." *Opp Cotton Mills* v. *Administrator*, 312 U.S. 126, 152-53 (1941). In this case the requisite hearing was held before the final decision of indefinite suspension was made.

In their attack upon the F.A.C. the plaintiffs make the further argument that the F.A.C. has deprived them of equal protection of the law. More specifically, the

plaintiffs asset that the actions of plaintiffs Brooks and Booth which led to the charges of gross disrespect for University authorities were no different in quality than the actions of other students not selected for punishment. The plaintiffs contend, for example, that James Montgomery, who is now President of the University Student Council, also referred to President Davis as an "Uncle Tom" at the April 12 nominating convention. The plaintiffs further allege that many of the twenty-eight students who received the June 21 letters and elected to contest the proposed indefinite suspension were permitted to continue at the University on the basis of a telephone call and that only in the plaintiffs' cases did the F.A.C. make additional charges subsequent to the June 21 letters. Plaintiffs conclude that the actions of the F.A.C. were taken against them because the plaintiffs sought the aid of counsel.

The equal protection clause of the Fourteenth Amendment was "intended to secure 'the full and equal benefit of all laws and proceedings for the security of persons and property' and to subject all persons 'to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.' R.S. § 1977, 42 U.S.C. § 1981 (1958 ed.)." *McLaughlin* v. *Florida*, 379 U.S. 184, 192 (1964). Equal protection of the law guarantees against invidious discrimination between persons in similar circumstances. The law may not lay an unequal hand on those who have committed intrinsically the same quality of offense. *Skinner* v. *Oklahoma ex rel. Williamson*, 316 U.S. 535 (1942); *Yick Wo* v. *Hopkins*, 118 U.S. 356 (1886). On the other hand, there is no violation of equal protection of the law when a statute or a regulation, or the application or enforcement of either of them, makes a classification that is reasonable rather than arbitrary. *Hernandez* v. *Texas*, 347 U.S. 475 (1954). In the instant case any action by the F.A.C. made arbitrarily without regard to a reasonable classification would not be consistent with equal protection of the law.

The record before the Court, however, does not support the plaintiffs' contention that they have been arbitrarily and invidiously discriminated against by the

F.A.C. While it is true that James Montgomery did refer to President Davis as an "Uncle Tom," there is no evidence or indication that he at any other time was disrespectful toward University authorities. There is in the record considerable evidence that on several occasions plaintiffs Booth and Brooks both treated University officials with gross disrespect. Further, the failure of the F.A.C. to make any additional charges against any of the other students seeking to continue their studies at the University following the June 21 letters could very well have resulted from the fact that none of the other students engaged in any activities subsequent to June 21 for which they should have been disciplined. There is no evidence that would indicate otherwise. The plaintiffs' contention that they were disciplined because they retained counsel is totally without merit since other students who retained the same counsel as plaintiffs were permitted to continue at the University.

In summary, the record in this case demonstrates that the F.A.C. throughout the crucial period here involved has acted reasonably and in good faith. The facts simply do not support the plaintiffs' contention that the F.A.C. invidiously and arbitrarily discriminated against them. It may very well be that the F.A.C. in the exercise of its discretion decided not to punish other students, but there is no evidence to indicate that the decision to punish plaintiffs and not others was not reasonably and fairly made.

The final contention raised by plaintiffs is that the action of the F.A.C. was taken to discourage or punish the plaintiffs in the exercise of their First Amendment freedoms. The alleged basis for this contention is that they were denied the right to continue their education at the University because they publicly expressed themselves on campus and community affairs.

The right to freedom of speech, along with the other First Amendment rights, is of course an indispensable democratic freedom secured to all by the First Amendment to the Constitution. These freedoms are given a preferred place in our scheme, a priority providing "a

sanctity and a sanction not permitting dubious intrusions." *Thomas* v. *Collins*, 323 U.S. 516, 530 (1945). The right to freedom of speech has long been made applicable to the states under the due process clause of the Fourteenth Amendment. *Gitlow* v. *People of New York*, 268 U.S. 652 (1925); *DeJonge* v. *Oregon*, 299 U.S. 353 (1937).

Plaintiffs in their brief make the assertion that this case deals with speech in its pure or pristine form; that is, that there were no accompanying demonstrations or picketing which could disrupt or delay University proceedings. While it is correct, as the plaintiffs contend, that there were no demonstrations or picketing, the facts compel the conclusion that there was other conduct of the plaintiffs disrupting and undermining University proceedings. For example, as stated above, plaintiff Brooks was found to have said to President Davis, "Man, we didn't come here to listen to your lies and empty promises. We came here to eliminate you and tear this joint down." This statement was made by Brooks at a time when he led several others in completely disrupting a grievance meeting at the University on April 12. This meeting was being held in the aftermath of three days of rioting at or near the University campus, a crucial time in its existence. Clearly such conduct involves a departure from the exercise of free speech in its pure or pristine form. The F.A.C. in each one of the findings concerning speaking or leafletting could justifiably have found from the evidence that the actions of the plaintiffs promoted unrest and disrupted the normal educational activities at the University. The plaintiffs were not punished because they exercised their First Amendment freedoms. The record of this case supports the conclusion that the action of the F.A.C. was in no way an attempt to suppress the plaintiffs' political views but rather was an effort by the F.A.C. to control and regulate conduct obstructing the educational functions of the University.

The Supreme Court has made it clear that conduct such as picketing and parading is subject to regulation even though intertwined with expression and associa-

tion. *Cox* v. *Louisiana*, 379 U.S. 559 (1965). There are many instances in which certain forms of conduct mixed with speech may be regulated or prohibited. The classic example is that given by Mr. Justice Holmes: "The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic." *Schenck* v. *United States*, 249 U.S. 47, 52 (1919). Also, a man may be punished for encouraging the commission of a crime, *Fox* v. *Washington*, 236 U.S. 273 (1915), and for uttering "fighting words," *Chaplinsky* v. *New Hampshire*, 315 U.S. 568 (1942). As the Supreme Court said in *Giboney* v. *Empire Storage & Ice Co.*, 336 U.S. 490, 502 (1949), "it has never been deemed an abridgement of freedom of speech or press to make a course of conduct illegal merely because the conduct was in part initiated, evidenced, or carried out by means of language . . . ."

The indefinite suspension of the plaintiffs resulted from their obstructive conduct which, just as in the case of picketing and parading, is subject to regulation even though commingled with expression and association. The action of the F.A.C. did not constitute a deprivation of plaintiffs' First Amendment freedoms.

The result which the Court reaches on this issue is similar to that reached in *Blackwell* v. *Issaquena County Board of Education*, *supra*. There the school authorities prohibited students from wearing "freedom buttons" which depicted a black and white hand joined together and the word "SNCC" underneath. The record showed an unusual degree of commotion, boisterious conduct, collision with the rights of others, and undermining of authority as a result of the wearing of these buttons. The court held that the regulation was a reasonable rule necessary to maintain order and that it did not violate the plaintiffs' right to freedom of speech. Cf. *Burnside* v. *Byars*, *supra*.

In concluding that the F.A.C. in the exercise of its power to control student conduct and behavior has not deprived the plaintiffs of any constitutionally protected rights, the Court is in no way departing from the rule of *Dixon* and *Knight* that due process of law requires

notice and some opportunity for a hearing before a st
dent at a tax supported university may be expelled f
misconduct. While a state school must comply with the
elementary principles of procedural fair play, it is n
necessary that a university adopt all of the formaliti
of a court of law. To achieve its educational goals
university must maintain order, propriety, and disc
pline. It is axiomatic that the exigencies of universit
life require the formulation and enforcement of rul
of student conduct, and a court of law will not interfe
with this function when, as in this case, the universit
has proceeded in a manner that is fundamentally fa
and reasonable.

For the reasons set forth the relief requested in th
complaint will be denied and the plaintiffs' action wi
be dismissed on the merits. This opinion will constitut
the Court's Findings of Fact and Conclusions of La
pursuant to Federal Rule of Civil Procedure 52. Judg
ment has this day been entered in accordance with thi
opinion.

/s/ Wm. E. Miller
United States District Judg

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

Civil No. 4887

[File endorsement omitted in printing]

KENNETH R. JONES, ET AL., PLAINTIFFS

v.

THE STATE BOARD OF EDUCATION OF AND FOR THE STATE OF TENNESSEE, ET AL., DEFENDANTS

JUDGMENT—entered January 18, 1968

In this action upon the grounds and for the reasons set forth in the opinion of the Court filed January 17, 1968:

It is hereby ORDERED and ADJUDGED that the plaintiffs' action be, and the same is, hereby dismissed.

The said opinion shall constitute the Court's Findings of Fact and Conclusions of Law pursuant to Federal Rule of Civil Procedure 52.

The costs of this action shall be assessed to the plaintiffs.

/s/ Wm. E. Miller
United States District Judge

IN THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 18482

KENNETH R. JONES, ET AL., PLAINTIFFS-APPELLANTS

v.

THE STATE BOARD OF EDUCATION OF AND FOR THE STATE OF TENNESSEE, ET AL., DEFENDANTS-APPELLEES

On Appeal from the United States District Court for the Middle District of Tennessee, Nashville Division.

OPINION—Decided February 19, 1969.

Before: O'SULLIVAN and COMBS, Circuit Judges, and KENT, District Judge.*

COMBS, Circuit Judge. Plaintiffs brought this action for themselves and others similarly situated against Tennessee A & I State University, its Faculty Advisory Committee, and various other officials. The complaint sought to enjoin defendants from refusing to reinstate plaintiffs at defendant university, and from suspending, expelling, or otherwise disciplining plaintiffs either for the lawful exercise of federally protected rights or without affording them due process and equal protection of the law.

On June 8, 1967, approximately seventy students, including plaintiffs Jones, Booth, and Brooks, received telegrams informing them they had not been cleared to enter the university for summer study. Subsequently, each of them received a letter stating that the Faculty Advisory Committee had voted to deny the student the privilege of continuing his education at the university for an indefinite period for the reasons stated in the letter. The letters also notified the students that each would be provided an opportunity to appear before the committee to show cause why the action should not be taken; also that the committee

* Honorable W. Wallace Kent, Chief Judge, United States District Court for the Western District of Michigan, sitting by designation.

would consider its decision final as to those students who failed to request an appearance.

Twenty-eight students notified the committee that they desired a hearing; for various reasons, the committee agreed not to suspend twenty-two of them. The remaining six included the three plaintiffs, one student who was readmitted after a formal hearing, and one whose case became moot when he decided not to re-enter the university; the record does not indicate the disposition of the sixth student's case.

In September, 1967, two days before the hearings were to begin, plaintiffs were furnished with a more definite specification of charges. The September statement included several charges not contained in the June letter, some of which involved plaintiffs' activities occurring after the June notices. At the scheduled time, plaintiffs appeared with counsel before the committee, and a lengthy hearing was held.

Following the hearings, and after consideration of numerous charges and alleged incidents of misconduct, the committee upheld its initial ruling denying reinstatement to plaintiffs Jones, Booth, and Brooks. The committee made various findings in regard to each plaintiff, including the following:

> Jones—The committee found that Jones "seized upon the opportunity on different occasions to promote unrest on the campus by such actions as distributing literature designed for that purpose," for example, by distributing a leaflet urging a boycott of fall registration; that Jones did not tell the truth at this hearing in regard to certain of his activities; and that Jones' actions constituted "violations of the University's regulations governing student conduct and behavior."
>
> Booth—The committee found that Booth was arrested by city police while off campus at which time he was found in bed with a young woman, and that because of the resulting publicity "he has tainted the reputation of this Institution and its students;" that Booth "passed out literature and talked and dressed himself in such manner, particularly in and about the

library, all calculated to cause unrest and disturb other students;" and that Booth "disrupted a meeting of the student body and showed gross disrespect for officials of the University."

Brooks—The committee found that Brooks "has on at least two occasions treated the President of this Institution with gross disrespect;" that Brooks was the leader of a small group that invaded a student-faculty grievance meeting which "resulted in disrupting an otherwise orderly meeting to a point it could not be continued, showing gross disrespect both to students and officials of the University." (The tenor of Brooks' attitude on this occasion is exemplified by the following statement he is quoted as having made: "Man we didn't come here to listen to your lies and empty promises. We came here to eliminate you and tear this joint down.")

Plaintiffs contend here, as they did in district court, that the procedures followed by the school authorities deprived them of due process of law and that the conduct for which they were suspended was protected activity under the First Amendment. The district court, in rejecting these contentions, held that the university properly exercised its power to regulate student conduct and did not deprive plaintiffs of any constitutionally protected rights.

We take special note of plaintiffs' argument that they were expelled for activities which are protected by the First Amendment. This argument is clearly refuted by the record which is replete with substantial evidence to support plaintiffs' expulsion for conduct other than the type of activity which is entitled to constitutional protection.

The district judge filed a carefully written and comprehensive opinion, which is reported at 279 F. Supp. 190. For the reasons expressed in that opinion the judgment is affirmed.

IN THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 18,482

KENNETH R. JONES, FREDERICK BROOKS AND JAMES MICKEY BOOTH, PLAINTIFFS-APPELLANTS

vs.

THE STATE BOARD OF EDUCATION OF AND FOR THE STATE OF TENNESSEE, ET AL., DEFENDANTS-APPELLEES

Before: O'SULLIVAN and COMBS, Circuit Judges, and KENT, District Judge.

JUDGMENT—Filed February 19, 1969

APPEAL from the United States District Court for the Middle District of Tennessee

THIS CAUSE came on to be heard on the record from the United States District Court for the Middle District of Tennessee and was argued by counsel.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby affirmed.

It is further ordered that Defendants-Appellees recover from Plaintiffs-Appellants the costs on appeal, as itemized below, and that execution therefor issue out of said District Court.

Entered by order of the Court.

s Carl W. Reuss
Clerk

SUPREME COURT OF THE UNITED STATES

No. 480 Misc., October Term, 1969

KENNETH R. JONES, ET AL., PETITIONERS

v.

STATE BOARD OF EDUCATION OF AND FOR THE STATE OF TENNESSEE ET AL.

On petition for writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

ORDER GRANTING MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS AND GRANTING PETITION FOR WRIT OF CERTIORATI—October 13, 1969

On consideration of the motion for leave to proceed herein in forma pauperis and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in forma pauperis be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted as to the petitioner, Jones. The case is transferred to the appellate docket as No. 731 and placed on the summary calendar.

IT IS FURTHER ORDERED that certiorari be, and the same is hereby, denied as to the other petitioners.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1969 388690 321

Office-Supreme Court, U.S.
FILED
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JOHN F. DAVIS, CLERK

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

No. 731

LIBRARY
SUPREME COURT, U. S.

KENNETH R. JONES,

Petitioner,

—v.—

THE STATE BOARD OF EDUCATION OF AND FOR THE STATE OF TENNESSEE, and its members ERNEST C. BALL, THOMAS M. DIVINE, DALE GLOVER, EDWARD L. JENNINGS, JAMES H. JONES, JR., E. H. KENNEDY, MRS. B. A. MCDERMOTT, D. M. SPOTWOOD, F. THORNTON STRONG, J. FRANK TAYLOR, MRS. SAM WILLIAMS; TENNESSEE AGRICULTURAL AND INDUSTRIAL STATE UNIVERSITY FOR NEGROES, its President, WALTER S. DAVIS, and its FACULTY ADVISORY COMMITTEE, and the members thereof JOSEPH A. PAYNE, CARL CRUTCHFIELD, A. V. BOSWELL, G. M. SAWYER, GEORGE DAVIS, R. N. MURRELL, LEWIS HOLLAND, JAYME WILLIAMS, MRS. M. B. CROOKS, JAMES M. CONLEY; J. HOWARD WARF, as Commissioner of Education; and BUFORD ELLINGTON, as Governor of Tennessee,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITIONER'S BRIEF

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

No. 731

KENNETH R. JONES,

Petitioner,

—v.—

THE STATE BOARD OF EDUCATION OF AND FOR THE STATE OF TENNESSEE, *et al.*,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITIONER'S BRIEF.

Opinions Below

The opinion of the United States Court of Appeals for the Sixth Circuit is reported at 407 F.2d 834 (6th Cir. 1969) and appears at pp. 208-10 of the Appendix. The opinion of the United States District Court for the Middle District of Tennessee is reported at 279 F. Supp. 190 (M.D. Tenn. 1968) and appears at pp. 183-206 of the Appendix.

Jurisdiction

The judgment of the Court of Appeals for the Sixth Circuit affirming the district court's dismissal of petitioner's complaint was entered on February 19, 1969. The three

plaintiffs below filed a petition for certiorari on June 19, 1969 (after a thirty day extension of time had been granted) and on October 13, 1969 this Court ordered that the writ be "granted, as to petitioner, Jones. Certiorari denied as to other petitioners." 90 S. Ct. 145. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

Questions Presented

1. Whether a university's student conduct regulations proscribing "Disrespect" and "any other infractions . . . that require severe disciplinary action" are unconstitutionally vague and overbroad under the first and fourteenth amendments of the Constitution.

2. Whether a university violated its student's right to freedom of speech, as guaranteed by the first and fourteenth amendments of the Constitution, by dismissing him for handing out a leaflet.

3. Whether due process was violated when the members of the tribunal had initiated, investigated and drawn the charges and it was their practice to also act as witnesses, and the reviewing person was an intensely interested party and a sharply controverted witness.

4. Whether the disciplinary proceedings violated the due process clause in that notice was deficient in the following respects: (a) there was inadequate time to prepare the defenses of the charges; (b) an uncharged finding was made; (c) the charges and pre-hearing procedures gave inadequate notice of the nature of the case.

Constitutional Provisions and Regulations Involved

Constitution:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances. *U.S. Const.* amend. I.
>
> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. *U.S. Const.* amend. XIV, § 1.

Regulations (from the *Student Handbook*[1] 17-18):

Offenses Requiring Severe Discipline:

> . . . . . .
>
> Disrespect for University authority.
>
> . . . . . .
>
> Any other infractions of standards of conduct that require severe disciplinary action.

[1] This publication (herein cited as "HANDBOOK") is Pl. Exh. 29 (admitted at T. 32, 238). It appears in the Appendix beginning at A. 177 but is not paginated into the Appendix; its original page numbers will be cited.

Statement of the Case

Petitioner Kenneth R. Jones was dismissed from the Tennessee State University[1] (herein sometimes referred to as the "University"), for having engaged in speech activities.

The University Proceedings Prior to Hearing

Jones was first notified of disciplinary action by a telegram dated June 8, 1967 signed "Faculty Advisory Committee" (the "F.A.C.") (A. 17). The F.A.C. had not, however, formally met to take action (A. 123-28). The telegram merely advised Jones that he had "not been cleared to enter the University for summer study" and that a letter would follow.

He subsequently received a form letter dated June 21, 1967 (more than a week after the beginning of the summer session when his efforts to register had been rebuffed (A. 42-43)), which stated that the committee had "voted unanimously to deny you the privilege" of continuing your

[1] At the time the University was officially "The Tennessee Agricultural and Industrial State University for negroes [sic] at Nashville." TENN. CODE ANN. § 49-3201. After the court in *Sanders v. Ellington*, 288 F. Supp. 937 (M.D. Tenn. 1968) ordered that a desegregation plan be filed with regard to this and other universities, the foregoing code section was amended to change the name to "Tennessee State University at Nashville". Pub. Acts of Tenn. of 1969, ch. 302 (May 8, 1969). Its statutory "function" remains unchanged: "to train negro [sic] students in agriculture, home economics, trades, and industry, and to prepare teachers for the elementary and high schools for negroes [sic] in the state." TENN. CODE ANN. § 49-3206.

[2] Thus the stage was wrongly set. This University had already been through litigation on the rights of its students. See *Knight v. State Board of Education*, 200 F. Supp. 174 (M.D. Tenn. 1961). Its administrators might have been especially sensitive to the

education at this University for an indefinite period" (A. 18). The letter went on to charge

> Involved in worm-on-plate incident in cafeteria in an alleged attempt to discredit cafeteria workers; fraud and conspiracy. Participated in riot.

It stated that the F.A.C. was "providing an opportunity for you to appear before it for a special hearing at which time you may show cause why this action should not be taken." It took the rest of the summer for the University to furnish Jones' attorney with a detailed specification of charges[1] (A. 104-10). More detailed charges (A. 27-28) for the most part unrelated to those in the June 21 notice of dismissal were provided on September 14. The hearing before the F.A.C. was conducted on September 19[2] (A. 127).

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teaching that education is more right than privilege. See *Brown v. Board of Education*, 347 U.S. 483 (1954); *United States v. Jefferson County Board of Education*, 372 F.2d 836 (1966), aff'd en banc, 380 F.2d 385 (5th Cir.), cert. denied, 389 U.S. 840 (1967); *Dixon v. Alabama State Board of Education*, 294 F.2d 150 (5th Cir.), cert. denied, 368 U.S. 930 (1961).

[1] Apparently however this action had already been taken—Jones' academic transcript bears the notation "Disciplinary dismissal, suspended indefinitely 6-5-67" (A. 17). The University's difficulties in accommodating what it was actually doing with its written records cropped up again and again; for example at the district court hearing it was revealed that the F.A.C. chairman whose name was signed to the June 21 actions had not signed them, had been out of town at all relevant times, and knew nothing about those proceedings (A. 93-103). The references to the "unanimous" vote was easily explained—there had only been one dissenting vote on anything in the last 50 cases (A. 102).

[2] The F.A.C. chairman did not respond to counsel's requests because "I have never had the position of an attorney . . . I was of the opinion that he was just a lawyer that had no business in the committee at all . . . [But] I was extremely wrong" (A. 105).

[3] The transcripts of all three plaintiffs' F.A.C. hearings are Pl. Exh. 1 (admitted P. 3). Portions of the Jones transcript are

Offers of earlier hearings never came to fruition because the detailed charges had not been provided (T. 350-57). When they were provided the opening of the next term was imminent (Jones F.A.C. 24).

At the hearing in the district court witnesses (T. 174-200, 283-329, partially reproduced at A. 53-60, 88-97) were presented and offers of proof (A. 130) were made of additional evidence that would have been presented to the F.A.C. had there been adequate time to prepare.

The only charges on which the F.A.C. ultimately made affirmative findings were based on the two offenses listed under the heading "Offenses Requiring Severe Discipline," quoted p. 3 *supra* (A. 119-21).[6]

Although the president of the University repeatedly emphasized the importance of following the *Handbook* to the letter (see, *e.g.*, A. 68-69, 79, 82,[7] 86-87), the University did not follow it. The *Handbook* requires that discipline cases be first brought before the Men's Senate; this was not done (Handbook 16; A. 43-44, 73-74; T. 138-39). Instead, the University followed its "usual policy" of making the "dismissals before offering the students a hearing" (A. 75).[8]

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in the Appendix (A. 137-66). References to other parts of these transcripts will include the respective plaintiffs' name, *e.g.*, "Jones F.A.C. 1."

[6] The chairman of the F.A.C. testified explicitly that only these two regulations were relied upon.

[7] He felt that an example of "destruction" would be "something that would make us violate the student handbook . . . ."

[8] Most of the seventy or so telegrams and letters of dismissal (A. 113), including those sent to Jones, were sent as the result of

The F.A.C.'s taking of proof began with its chairman stating: "At this point we would like to ask Mr. Jones to respond to the first charge" (A. 142).

The F.A.C. Charges, Findings, and the Evidence

A few days after the completion of the September 16 F.A.C. hearing, the committee issued its "Report of Findings and Decision" (A. 29-31).

The September 14 charges and the specific finding were:

Charges (A. 27-28)

You are charged with conduct unbefitting a University student in that during the school year you created a disturbance in the cafeteria located within Jane E. Elliott Hall. During that time a "worm" which obviously had not been processed through the kitchen was said to have been found in some food served to one of your fellow students. Your actions on that occasion exemplify a disrespect for University authority.

Specific Finding (A. 30-31)

We, the Committee find that Mr. Jones has seized upon the opportunity on different occasions to promote unrest on the campus by such actions as distributing literature designed for that purpose. At the hearing he demonstrated his indifference to the truth by denying that he passed out such literature despite positive statements by cafeteria personnel and the President of the University that he had done so. We have no

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the student's name being on the "Undesirable List" (Pl. Exh. 37, admitted A. 112), an annual compilation of undesirables prepared by the Dean of Students (who is a member of the F.A.C.) (see A. 715-16, 123, 127-28). The "Offenses" listed thereon range from "failed room inspection," and "Black Power advocate" through "Threatened to shove penis in mouth of [name omitted]. Three demerits" to "shooting Mr. Harold Harris in the area of WRC."

Charges (A. 27-28).

You are charged with distributing literature and soliciting students, all of which was designed to boycott the registration at the University for the Fall Quarter of 1967. This occurred during the Summer of 1967.

You are charged with having been recently arrested by the Nashville Metropolitan Police Department at Fortieth Avenue and Clifton Road upon a charge of disorderly conduct. Pursuant to that arrest, you were convicted and fined $50.00 by the Judge of the Metropolitan City Court.

You are charged with continuous disrespect for University authority, all of which is a violation of Chapter 4, Student Handbook, "Discipline and Honor", pages 17 and 18, and Chapter 3, "Conduct", page 11.[9]

Specific Finding (A. 30-31)

doubt that this student did not tell the truth when he appeared before us in this regard.[10]

[9] Although this last paragraph appears to be a separate charge, and at first was so treated (see A. 147), the University's counsel finally explained that, "I think the last statement was designed so as to pinpoint the specific regulation which we say he is in violation of, which would give the committee authority to act, period" (A. 148).

[10] While it is extremely doubtful that this finding is correct, it cannot in any event serve as a basis for dismissal as he was never charged with dishonesty. The district court, implicitly recognizing this, did not rely on this finding to uphold the dismissal. But had it not been for this uncharged finding, the penalty may well have been less severe.

The finding continued with the imposition of the University's ultimate penalty.[11]

> After considering all of the matters before this Committee, we feel that Mr. Kenneth Jones has violated the rules of conduct governing students at this University to such an extent that he should be suspended for an indefinite period.

While the other two plaintiffs, represented by the same counsel relying on the same first amendment freedoms, freely admitted handing out numerous leaflets (T. 94, 146), and Jones admitted handing out another leaflet,[12] he denied handing out Pl. Exh. 6 (A. 175, admitted T. 26), the only leaflet in the case that could be said to be designed to "boycott the registration" (Jones' testimony on the matter is at A. 44-46, 146, 153, 155-65).

It is apparent that Jones was actually disciplined for distributing the leaflet he said he distributed. This appears from the testimony against him at the F.A.C. hearing (and indeed from the findings)[13] and in the district court. One of the two witnesses against him testified that the boycott leaflet in question was handed out before it even existed (A. 149-52).[14] The other witness (the President of the University, hardly a person who had to be shielded from controversial ideas) could well have been mistaken as to which

[11] All disciplinary dismissals are "indefinite suspension" (A. 74).

[12] Pl. Exh. 5 (A. 168, admitted T. 26), a more moderately worded newsletter having nothing to do with the University.

[13] *I.e.*, the omission of reference to the threatened boycott and the inclusion of reference to the uncharged "different occasions." See p. 7, *supra*.

[14] See also Brooks F.A.C. 58.

leaflet was which he could not recall when Jones handed it to him (A. 134-35) and he refused to even look at it in the district court.[9]

But regardless of which particular leaflet was handed out,[10] the more important point is that there is absolutely

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[9] Q. Dr. Davis, I'm going to hand you a two-page mimeographed document that's stapled together. Is this the piece of literature? A. That's what I'm talking about.

Q. Would you like to look at it, sir? A. No.

Q. Can you recognize it without reading it, sir? A. Yes.

Q. Do you feel that this piece of literature was harmful to the university? A. I know it was, could have been.

Q. How, sir? A. The intent was to generate harm, to block the university and get students all stirred up and not wanting to register.

Q. Let me offer this to you again, and point to language that is attempting to— A. No, I'm not.

Q. Are you refusing to answer the question? A. I'll answer it, but I'm not going to read it. (A. 77-78.)

The President also refused to read or point out potentially disruptive portions of the literature handed out by petitioner Booth (A. 80-81).

The foregoing is also indicative of the nature of the president's entire testimony. It is found at A. 61-88, 134-35, Booth F.A.C. 12-19, 58-68, Brooks F.A.C. 20-26, 40-43, 68-74. It was generally evasive, biased, non-responsive, and at times incoherent. His testimony that Booth was the first student in 50 years to call him an Uncle Tom (Booth F.A.C. 68 ¶ 27-30) was thoroughly discredited and the district court found the contrary as a fact (A. 301). The inconsistencies in his testimony against Brooks were so glaring that counsel for the university stated: "Let the record show that Dr. Davis is not swearing to any of this." (Brooks F.A.C. 23). It would be better if the testimony could be ignored as an unfortunate aberration, but since without it there is no case at all for Jones' dismissal, it is discussed.

[10] The controversy is preserved so that this Court may "analyze the facts in order that the appropriate enforcement of the federal right may be assured." *Norris v. Alabama*, 294 U.S. 587, 590 (1935). *See Pickering v. Board of Educ.*, 391 U.S. 563, 578 n. 2 (1968); *Pierre v. Louisiana*, 306 U.S. 354, 358 (1939) ("independent inquiry and determination of the disputed facts . . ."). Cf. *Estelban*

no testimony that actual disruption occurred or that there was interference in any way with school routine. There was no student response to the literature.[17]

Since the district court hearing did not take place until several months after the alleged leafleting and well into the next school term, and since the University took no particular action to stop the distribution, it is unnecessary to consider whether interference could have reasonably been forecast.[18]

The Conflicting Interests and Confusion of Functions

The President of the University reviews the findings of the F.A.C. "to determine whether I feel I should veto the action."[19] (A. 69) He appoints the members of the F.A.C. (T. 218) He, subject to approval of the State Board of Education, is responsible for selection and employment of administrative personnel. (A. 68)

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v. Central Missouri State College, No. 19,585 (8th Cir. Aug. 28, 1969) (dissenting opinion).

[17] The F.A.C.'s Acting Chairman shed some light on their concern:

> ". . . students going about their normal activity would see somebody passing out literature . . . they would stop to read to see what this is all about, when they may have been addressing themselves to academic pursuit (A. 121-22).

[18] Even so there was no testimony to this effect except vague generalities; the President declined to even point out what part of the leaflet might be harmful (A. 78) although it ranged over several subjects.

[19] The standards of review "are in relationship to my contract with the Southern Association, with the State Board of Education . . ." but could not be explained because "that would take three or four years in school to do that" (A. 69).

At least five of the nine members of the F.A.C. are administrators; the rest are faculty members. (See A. 66-67) Four members are also members of the President's Executive Committee. (A. 67)

The President was one of the two witnesses testifying on the leafleting charge at the F.A.C. hearing against Jones (the testimony of the other witness being rendered incredible by her assertion that the leaflet was passed out some weeks before it was even written. (A. 147-52))

His testimony was sharply controverted by Jones. (A. 146, 153, 155, 161)

It wasn't necessary for the President to participate in all of the F.A.C. proceedings "because everything I know they knew it." (A. 84) Before the F.A.C. met formally the President discussed the students to be disciplined "[m]any times" (A. 85), referring to them as "problem children."

Contrary to his usual practice at the start of the school year the President had not appointed new F.A.C. members. (A. 63)

He did not reverse the findings of the F.A.C.

All disciplinary charges were collected, compiled, managed, investigated, and initiated by the Dean of Students or his staff.

The initial charges had been brought based on the annual "undesirable list" (n. 8, p. 6, *supra*) prepared under the auspices of the Dean of Students, who was acting as chairman of the F.A.C. (A. 116, 127-29) The list had been compiled by a personnel committee, the membership of which overlapped that of the F.A.C. (A. 124-27) The F.A.C. had

already compiled materials to "take an in-depth look at the student and his behavior . . ." (A. 113) It was the F.A.C. itself which had made the initial decision to dismiss the students.

Then the F.A.C. delved further.[20] They composed with the assistance of their counsel, the final charges of September 14th. (A. 110, 118) In so doing they dropped two of the three June charges against Jones, made the third more detailed, and added at least two[21] more charges relating to matters which arose after June.[22]

The Assistant Attorneys General who appeared at the hearing were the F.A.C.'s counsel, not independent prosecutors. They were introduced as "representing Tennessee A&I University" (Jones F.A.C. 3) and participated in drafting the findings. (A. 122)

It was the F.A.C. that called the prosecution witnesses and presented (to itself) documentary evidence. (A. 145-49,[23] 153; Jones F.A.C. 20, 45-46)

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[20] And claimed, through their counsel, the prerogative of judging their own findings: "the person who saw the conduct . . . knows more about what he saw than some third party" (A. 167, see A. 166).

[21] The number would be three if the boiler-plate charge of "continuous disrespect for University authority . . ." is considered as a separate charge (*see supra*, p. 7).

[22] As to the other two plaintiffs, a total of four June charges were dropped, three were made more detailed, and seven new charges (mostly arising before June) were added.

[23] The acting chairman announced: "We have called Mrs. Knight as one who actually saw Kenneth Jones passing out leaflets . . . I present Mrs. Knight for any questions that anybody would like to ask" (A. 148-49). After Mrs. Knight proceeded to testify that the leaflet was handed out before it existed, an F.A.C. member commented on her testimony in an apparent attempt to rehabilitate her or at least to minimize the effect of the discrepancy. (Jones F.A.C. 87).

The F.A.C. members on occasion stepped down from their "bench" to give controverted testimony against other students. (See Booth F.A.C. 74, 77, 78-81, 94-95; Brooks F.A.C. 18-19,[24] 40-49) At least five of them had witnessed events in question. (See Booth F.A.C. 60, 65, 68-69, 74; Brooks F.A.C. 15, 69-73) The President, too, testified vigorously against these other students. (A. 84-85; Brooks F.A.C. 24-25; Booth F.A.C. 12-18, 65-66)

At the opening of the hearings the F.A.C.'s counsel gave notice that it would not be expected to confine itself to the record:

> We can't possibly visualize this committee's closing its eyes to the things he has done or hasn't done, if anything, during the summer of 1967. It would be impossible in the first place. And in the second place, I don't think it would be appropriate. (A. 142)

At the opening of the Brooks hearing this position was developed in considerably more detail (A. 166-67), including:

> We cannot disrupt the procedure long followed in this school because it develops that a student makes his remarks against those who sit in judgment of students. (A. 166)[25]

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[24] Dean Sawyer opened his testimony

> Ladies and gentlemen, I am a personal witness to the event as related by President Davis, and I became so incensed over the behavior of Mr. Brooks

[25] The leaflet Jones allegedly handed out generally disparaged the University's administrators (*i.e.*, the President and five of the F.A.C. members) as "puppet administrators" and "trembling, powerless idiots" who had "sold out the student body" in the interest of the "great white fathers downtown" (A. 175-76)

The most telling blow struck after the hearing had apparently concluded. The F.A.C., seemingly surprised that Jones had offered a defense, at this point elicited the testimony of its superior, the President of the University:

Dr. Payne [Chairman]: Is there anything further in this case?

Mr. Roberts [F.A.C. attorney]: We have nothing further.

Mr. Creswell [Jones' attorney]: May I ask just as a bit of curiosity as to what is going on now? Are we finished with this hearing?

. . . . .

Dr. Payne: We have in this regard just one more witness who well [sic] testify here. . . . I certainly feel that we ought to get testimony from this witness.

Mr. Creswell: I again note the same exception to Dr. Davis as a witness, and also request that, even though that exception refers to prior notice, I would just back that up in that at the beginning of this hearing you had some idea, I imagine, that you were going to call Dr. Davis and various other people. The hearing has come to an end twice; and twice you have decided that you are going to go out and get another witness.

Dr. Payne: We didn't know you were going to present telegrams and affidavits from Taliaferro.

Mr. Creswell: Just one.

Dr. Payne: President Davis and members of the committee, I hold in my hand a document that was circulated around the campus. I should like for you to take a look at this document. Have you seen it before,

and is there anything else you would like to say about it before the committee?

* * * * *

President Davis. Yes, I have seen this. Mr. Jones gave me this [reached me one out of his own hand] when I was on my way to my office not too many weeks ago. He personally reached me one, personally just as I came into this building, parked on this side. He reached me one personally. I went upstairs and read it. (A 153-54)

Summary of Argument

The availability of the Constitution to students grew with the Civil Rights movement. The seminal case of *Dixon v. Alabama State Board of Education*, 294 F.2d 150 (5th Cir.), *cert. denied*, 368 U.S. 930 (1961), involved Negro students expelled from a Negro college for their civil rights activity. *Dixon* was followed in *Knight v. State Board of Education*, 200 F. Supp. 174 (M.D. Tenn. 1961), where students at this same University were reinstated for lack of procedural due process in their dismissals for civil rights arrests.

These were procedural due process cases and, as Mr. Justice Frankfurter has said: "The history of liberty has largely been the history of observance of procedural safe-

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[1] Indeed it is this Court's affirmation of the importance of education in *Brown v. Board of Educ.*, 347 U.S. 483 (1954) that underscores the magnitude of the rights involved. *See Sipuel v. Board of Regents of State Education Comm'n*, 332 U.S. 631, 634 (1948) (Clark, J., dissenting).

Actually *State ex rel. Gaertner v. Board of Ed.*, No. [illegible], 61 Neb. 532, 85 N.W. 861 (1901) appears to be the first case to assert substantive and procedural rights. It has been neglected for many years.

"[T]he world is much with the modern state university." It is in no sense merely an enclave of scholars. Therefore, its non-academic regulations in areas of constitutional concern should be held to the same constitutional standards as, for example, those of a city or town.

Analysis of the particularity with which the University regulates the non-first amendment around-the-clock affairs of its students and the affairs of its faculty shows that narrow and precisely drawn regulations are well within its competence.

Further, the analysis, particularly as it focuses on this and other state Negro universities, shows the potential for and likelihood of abuse of vague and overly broad regulations.

And unquestionably deprivation of a university education, the money invested in that education, the probability that disciplinary dismissal will make it difficult to enter another school, the possibility that the stigma will cause problems in entering certain employment and professions, in addition to the deprivation of first amendment rights, is more serious than the rather minor costs of a misdemeanor prosecution.

Professor William W. Van Alstyne, perhaps the leading authority on student rights, speaks to this point in his

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[1] *Soglin* v. *Kauffman*, 295 F. Supp. 978, 988 (W.D. Wis. 1968), *aff'd*, No. 17,427 (7th Cir. Oct. 24, 1969) (applying vagueness doctrine).

[2] Clark Kerr, former President of the University of California, has devoted an entire book to explicating the worldly role of the university; it is appropriately titled THE USES OF THE UNIVERSITY (1964). The relationship of the modern university to society is also explored in J. K. GALBRAITH, THE NEW INDUSTRIAL STATE 282-95, 370-77 (1967).

article, *The Student as University Resident*, 45 Denver L.J. 582, 592 n. 23 (1968). He cites adverse decisions, including the district court's decision herein, and continues:

> Despite the opinion in these cases, I cannot believe that they are soundly reasoned. They are . . . highly reminiscent of A.P. Herbert's hearty spoof in *Rex* v. *Haddock* in which the accused had jumped into the Thames purely for fun, and . . . . The court stated:
>
> > Citizens . . . should be careful to bring these [unusual] actions into one of the recognized categories of crimes and offenses . . . .
>
> More seriously, vagueness and ambulatory administrative discretion as well as lack of notice of rules are constitutionally vicious, even aside from whether or not an individual had reason to suppose that he might subsequently be punished for his proposed conduct. The general problem is reviewed very well in Amsterdam, *The Void for Vagueness Doctrine*, 109 U. Pa. L. Rev. 67 (1960); Collings, *Unconstitutional Uncertainty—An Appraisal*, 40 Cornell L.Q. 195 (1955).

Another commentator has pointed out that if unspecific rules are permitted, students have not gained much

> from the decisions requiring procedural safeguards to be observed. It will do a student very little good to be given every protection of procedural due process ever thought of anywhere if, in the end, he may be expelled because the tribunal is free to apply a subjective judgment about what is acceptable conduct. Wright, *The Constitution on the Campus*, 22 Vand. L. Rev. 1027, 1069 (1969).

The analysis of the university may also be brought to bear on Jones' second substantive contention—that he cannot constitutionally be dismissed from the University for handing out a leaflet. The analysis, both as to the nature of the university and its propensity to stifle dissent[*] is especially pertinent to this contention that non-academic speech activity on a college campus should be evaluated against the clear and present danger test. No lesser standard, by the time it has filtered down through the lower courts, state politicians, and school administrators (who, in their upper echelons, are also state politicians) will work.

Procedurally Jones' claims fall into two categories, overlaid by a third problem. First, the tribunal (the F.A.C.) that heard his case was essentially inquisitorial and inherently biased and his appellate review was by the chief witness against him—the President of the University. Various F.A.C. members, particularly its Acting Chairman, had had extensive personal and official involvement with the case. They acted as investigators, charge bringers, indicters, prosecutors, jurors, and judges.

Second, he was given inadequate time to prepare his case (two days vs. three months consumed by the University in getting its charges and case in order) and inadequate notice of charges and of evidence. The charges either should have been made more detailed or he should have been afforded discovery.

Finally, the whole proceeding was infected by his dismissal in part for an uncharged offense—that he hadn't

[*] The added factor that school administrators are rather handily able to avoid being bound by *Tinker v. Des Moines School Dist.*, 393 U.S. 503 (1969) will also be developed.

told the truth at the hearing. It appears that in making this finding the F.A.C. relied on the knowledge or supposed knowledge it acquired during its investigation (or prosecution) or that it deferred unduly to testimony of its superior, the President.

There have been several recent informal codes defining student university relationships with emphasis on the constitutional type safeguards. Most widely known and endorsed is the *Joint Statement on Rights and Freedoms of Students*, 53 A.A.U.P. Bull. 365 (1967) (herein cited as "*Joint Statement*"). This statement has been approved by the American Association of Higher Education, the American Association of University Professors, the Association of American Colleges, the National Association of Student Personnel Administrators, the National Association of Women Deans and Counsellors and the United States National Student Association.[*]

Recently the Section on Individual Rights and Responsibilities of the American Bar Association has approved a *Statement of the Rights and Responsibilities of Undergraduate Students* (Nov. 1, 1968) (herein cited as "*ABA Statement*"). It is patterned after the *Joint Statement*. Its comments directly criticize this case for upholding "the practice of permitting an investigating official to sit on the hearing committee and disclose all he knows of the case

[*] The wide academic acceptance private universities are giving that university people do not feel that they should be bound by detailed rules. Further, Professor Charles Alan Wright cites his own experience and the documented experience of others to establish that narrowly drawn university regulations are entirely workable. Wright, *The Constitution on the Campus*, 22 Vand. L. Rev. 1027, 1041 (1969).

ARGUMENT

I.

The Codified Regulations of Tennessee State University Prohibiting "Disrespect for University Authority" and "Any Other Infractions of Standards of Conduct That Require Severe Disciplinary Action" Are on Their Face So Vague and Overbroad as to Violate the Constitutional Guarantees of the First and Fourteenth Amendments of the Constitution.

A. The Nature of the American State University Both Factually and Philosophically Must Be Fully Understood in Order to Properly Determine the Applicability of the Vagueness and Overbreadth Doctrines of the First and Fourteenth Amendments to University Disciplinary Rules.

The District Court's rejection of the contention that university disciplinary regulations must be drawn with specificity was based on "the very nature of the institution and its goals and purposes . . . ." (A. 197) Thus an inquiry into the "nature" of the American state university is pertinent. Such an inquiry in *Soglin v. Kauffman*, 295 F. Supp. 978, 988 (W.D. Wis. 1968), *aff'd*, No. 17,427 (7th Cir. Oct. 24, 1969), produced the following:

> I take notice that as of October, 1967, some 33,000 students were enrolled on the Madison campus; that many graduate schools, such as those of law and medicine, are situated on the Madison campus; that among

The charges against petitioner Jones also included a reference to a rule prohibiting "Any act in violation of city, county, state, or federal law." Hypothesis 18. This rule was not relied on. See testimony of the Acting Chairman of the DAC (A. 120).

the colleges, schools, or departments of the university at Madison are those of agriculture, business, engineering, family resources and consumer sciences, industrial relations research, journalism, military science, naval science, pharmacy, and a school for workers; that sources of major portions of its funds, in addition to state tax revenues, are grants from federal agencies and departments such as the Department of Health, Education and Welfare, and the Department of Defense; that the university has close and useful and productive ties to industry, agriculture, and organized labor in Wisconsin and elsewhere; that the university owns or controls a large area of land; that it owns or controls many buildings, some large, which are used as residences, classrooms, laboratories, offices, meeting places, restaurants, gymnasiums and playing fields (intramural and intercollegiate), and research centers; and that it maintains its own police force, hospital, parking lots, and similar functions and facilities.

I take notice that for some years the mean age of American college and university students has been more than 21 years, and that among them are more over 30 years than under 18. [footnote omitted]

I take notice that particularly in recent years the universities have become theaters for stormy and often violent protest over such matters as war and peace, racial discrimination in our cities and elsewhere, and the quality of American life; that this phenomenon adds new and unanticipated dimensions to the regulation of conduct in the universities; and that those charged with governance of these institutions have been struggling to preserve the many competing values involved.

I take notice that in the present day, expulsion from an institution of higher learning, or suspension for a period of time substantial enough to prevent one from obtaining academic credit for a particular term, may well be, and often is in fact, a more severe sanction than a monetary fine or a relatively brief confinement imposed by a court in a criminal proceeding.

The world is much with the modern state university. Some find this regrettable, mourning the passing of what is said to have been the old order. I do not share this view. But whether the developments are pleasing is irrelevant to the present issue. What is relevant is that the University of Wisconsin at Madison may continue to encompass functions and situations such as those which characterized a small liberal arts college of the early 20th century (of which some no doubt exist today), but that it encompasses many more functions and situations which bear little or no resemblance to the "models" which appear to have underlain, and continue in some cases to underlie, judicial response to cases involving college or university discipline. What is relevant is that in today's world university disciplinary proceedings are likely to involve many forms of misconduct other than fraternity hazing or plagiarism, and that the sanctions imposed may involve consequences for a particular student more grave than those involved in some criminal court proceedings.

Even though Tennessee State University is not the State's paramount institution, and its 4700 students (A. 62) come nowhere near the 33,000 of the University of Wisconsin, the structure and the function of the University show the same departures from the outmoded model of "a

small liberal arts college of the early twentieth century." *Id.*

1. *Tennessee State University, Its Internal Operation and Regulation*

According to its catalogue,[31] the University is divided into seven major areas:

Graduate School
School of Agriculture and Home Economics
School of Arts and Sciences
School of Education
School of Engineering
Department of Aerospace Studies[32]
Division of Agriculture and Home Economics
Extension Services Catalogue

There are sixteen departments in the graduate school and twenty-six undergraduate departments. *Id.* Hundreds of courses are offered. *Id. passim.*

Physically, the University is a massive undertaking. Its 450 acre campus encompasses more than 30 buildings (not counting an 18 building poultry plant) as well as farm land

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[31] TENNESSEE STATE UNIVERSITY CATALOGUE, BULLETIN, ANNOUNCEMENTS FOR 1969-70, at 4 (March, 1969) (herein cited as "CATALOGUE"). This and other University publications should be judicially noticeable as published works and/or the regulations of a state agency, but may not be readily accessible by the Court. Accordingly, this CATALOGUE and the publication, TENNESSEE A. & I. STATE UNIVERSITY FACULTY MANUAL, A MANUAL OF RIGHTS, DUTIES, OBLIGATIONS AND PROCEDURES FOR FACULTY MEMBERS (1965) (herein cited as "FACULTY MANUAL") are lodged with the Clerk herewith.

[32] This is ROTC; the University's listing of it on an apparently equal plane with its graduate school may or may not be indicative of its importance.

and pastures. *Catalogue* 23-24. In addition to classrooms and administrative offices, the University has a computer center, several auditoriums, a theater, swimming pools, bowling alleys, a wide range of other recreational facilities, a 120,000 volume library, laboratories, heating plant, nursery school, dairy and horse barns, stock pavilions, farm shops, gymnasium, stadium, student resident halls, private residences, guest rooms, family accommodations, counseling center, meeting rooms, book store, post office, ballroom, cafeterias, coffee shops, game rooms, and a machine shop. *Catalogue* 24-25; *Handbook* 3-4, 19-20, 24.

Administering the plant and ministering to the students and faculty cannot just be done by a few scholars taking time out from their scholarly pursuits.

Functionally, the University operates the nursery school on its Nashville campus and student teaching centers in Chattanooga and Memphis. *Catalogue* 22, 24. It operates a publications office, a health service on a 24 hour basis with hospitalization facilities and a staff of physicians, dentists and nurses, printing facilities, a testing bureau, a vigorous intercollegiate athletic program, communications clinic, a career planning and placement service,[33] electoral government activities, a public relations bureau for dealing with all forms of communications media, a Sunday School, worship services and mid-week meditations, a center for institutional research, student personnel service, a security or police force,[34] a motor vehicle registration and regulation scheme, and a maintenance department (in effect a department of streets, public works, and sanitation for the 450

[33] To which the students are *required* to report. HANDBOOK 28.

[34] The students must defer to night watchmen of this force as "duly deputized" officers. Failure to obey them is said to constitute a "misdemeanor." HANDBOOK 27.

acre urban and rural complex). *Catalogue* 24-33; *Handbook* 6-7, 11, 14, 27-29, 37, 46, 50, 54.

Even in those areas in which upon first thought it would appear that the University is only performing its function of imparting knowledge, it professes to be concerned with a wide range of nonacademic activity. Each undergraduate school introduces its section of the catalogue with a statement of its or the University's aims in this area of instruction. For example:

(a) The School of Agriculture and Home Economics "recognizes that the home and family life are fundamental and primary to the individual and to the survival of our economic structure." *Catalogue* 95. The School accordingly adopts a "philosophy . . . geared toward . . . " such things as "producing and processing more and better agricultural products," "satisfying careers," and "intelligent and respectful participation in the democratic way of life." *Id.*

(b) The Division of Agriculture and Home Economics Extension Services serves the nonacademic community by working "with agencies in rural and urban communities over the state in planning programs for general improvement in five major areas . . . ." *Id.* at 249. It offers the "services of its resource consultants," as "determined by needs of the local community" in fifteen different areas of specialization. *Id.*

(c) The School of Arts and Sciences numbers among its aims the preparation of students "to engage" upon graduation, the gainful occupations of American life." *Id.* at 117.

(d) The School of Education, too, numbers among its purposes "to assist graduates in finding teaching

positions . . . and in advancing to better teaching positions" as well as their "relation and responsibility" to "the economic society." *Id.* at 171. The "General Competencies Sought in General Education" range from "improve and maintain his own health" through "social adjustment through the enjoyment of a wide range of social relationships . . . ", "[d]iscriminate among moral and spiritual values and apply these values . . . ", and "[a]ccept the responsibilities . . . of democratic citizenship" to "an awareness of the greatness of man . . . ." *Id.* at 172.

(e) Additionally, the School of Education renders Public Services, in accordance with "many requests for services from local county and state agencies." *Id.* These services include consultation with local school personnel, conducting special courses and conferences, development and distribution of materials to school personnel, and work with a state-wide testing program. *Id.*

(f) Within the School of Education its Department of Health, Physical Education and Recreation endeavors "to provide opportunities for students to develop a reasonable degree of skill in a variety of leisure-time activities." *Id.* at 203.

(g) The unaccredited School of Engineering stresses that its program too is concerned with the economic well being as well as intellectual attainments of its students. *Id.* at 219. Its descriptions of its curricula in building construction ("carpentry, electricity, drawing and masonry" *id.* at 240) and technical printing state this clearly: "To train young men . . . to make a living . . . ." *Id.* at 240, 242.

(h) And of course the Department of Aerospace Studies (Air Force ROTC) is concerned with securing for its graduates commissions in the United States Air Force. *Id.* at 245.[35]

The University's nonacademic prescriptions pervade every moment of the student's life.[36]

In fact, one unacquainted with the concept of the University as a community of scholars might, upon reading the *Handbook* and the *Catalogue*, conclude that the University's primary function was rule making. To illustrate the minutiae of rule making:

(a) A detailed chart headed "DRESS *What to Wear—Where*" specifies male and female dress for all on and off-campus occasions and activities, including "Swimming," for which the attire is "Swim suits." *Handbook* 13. Students are not allowed out of their quarters unless they and their companions are properly dressed. *Id.* at 31.

(b) The University's marriage procedures are specified. *Id.* at 13-14.

(c) "Our Cafeteria Creed" (mandatory). *Id.* at 19-20.[37]

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[35] Additionally, the Department sponsors 6 non-curricular activities, primarily military but including an "*Angel Flight*. . . . composed of selected co-eds who are interested in enhancing esprit, morale and appearance of the Air Force ROTC Cadet Corps."

[36] "Life, then here at Tennessee State, as it moves on second by second and minute by minute, requires of us the constant exercise of self-discipline for proper moral growth." (HANDBOOK 15) *Cf. Marsh* v. *Alabama*, 326 U.S. 501 (1946).

[37] Including:

"I will take up my tray."
"I will refrain from cutting line."
"I will NOT WASTE food."

(d) 3 separate documents are involved for each undergraduate to gain library privileges, plus a fourth for graduate students and faculty. *Id.* at 21.

(e) The daily comings and goings of all students, and particularly women, are strictly regulated. *Id.* at 29-34.

(f) Women students can ride in automobiles only under certain conditions and only upon being escorted between her residence door and the car. *Id.* at 34.

(g) "The local and permanent resident addresses must be printed legibly and in ink and in full . . . ." *Catalogue* 39.

(h) There is, for writing papers, an "approved style used by the University." *Catalogue* 44.

The University regulates with specificity in every area but that which falls within the ambit of the first amendment.

2. *The University and Its External Relations*

In almost every respect the university has become more like a governmental body, both internally and in its outside relations than an isolated ivory tower of erudition, if ever it was such. The university of today not only has integral connections with and is, of course, supported by government but it is tied to the private sector of our society. Tennessee State University fits this pattern.

A. Connections with Government.

Tennessee State University, like almost all state universities, receives large portions of its income from the

federal government. *Catalogue* 23.[38] Federal aid flows to state universities, from such agencies and sub-agencies as the Department of Health, Education and Welfare, the National Institutes of Health, Department of Defense,[39] National Science Foundation, Atomic Energy Commission, Department of Agriculture, and National Aeronautics and Space Administration. *C. Kerr, The Uses of the University* 53 (1964). The sums involved are substantial. In 1960, for example, higher education received about $1.5 billion from the federal government—a one-hundredfold increase in 20 years. *Id.*

The influences and effects of large quantities of federal money upon the university are diverse. One aspect of these influences reveals a better understanding of the American state university, such as Tennessee State. Almost any judicial opinion on students' rights deals with one or both of

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[38] Federal interest in higher education dates from 1787. That year saw the beginning of endowment of public institutions of higher education with public lands, following the example of the Northwest Ordinance of 1785, which provided land to support public schools at the lower levels. However, this interest was not made effective until the Morrill Land Grant Act of 1862. Then the Second Morrill Act in 1890 supplemented the original land grants with federal grants of funds to support college instruction in specified subjects; these grants continue, and, in fact, have recently been expanded. Federal interest in higher education was further made effective by the Hatch Act in 1887, establishing the Agricultural Experiment Stations, and by the Smith Lever Act in 1914, creating the Agricultural Extension Service. C. KERR, THE USES OF THE UNIVERSITY 51-52 (1964).

Tennessee State University is a Land Grant Institution receiving federal funds under the Morrill Act, Smith Lever Act, and other federal acts. *Catalogue* 23, 245, 249.

[39] Loans under the National Defense Education Act of 1958, 72 Stat. 1580, as amended (codified in scattered sections of titles 20 and 42 U.S.C.), are available to Tennessee State University students as a part of this aid. *Catalogue* 32.

the following contentions: (a) a university should not be forced, because of specific constitutional requirements, to formulate specific, *internal* regulations, since such a "legislating" function is foreign to the University; and (b) it should not be subjected to *external* regulation, *e.g.*, federal requirements, since that also will disturb the high functions of the University.

Let us examine how one applies for federal grants with these two assertions in mind.

But if a professor desires to conduct a research project, he must deal with at least two separate sets of regulations—the internal regulations and those externally imposed by the agency from which funds may be obtained:

(i) *Internal* regulations promulgated by the University.

For example, if a professor needs funds to support research, Section 4.06 of the *Faculty Manual* requires that the professor discuss the details of both the proposed project and the agency from whom the funds are sought with his Department Head, the Dean of his particular School, the Dean of the Faculty, and the President of the University. This discussion must take place before any commitment to the project, agency, or otherwise is made.

If the particular project in which the professor has shown interest requires the use of the Computer Center at Tennessee State University, there are detailed University regulations with which the professor must comply before he can obtain computer time and use. *Faculty Manual* § 7.4. The professor starts with a request to use the Center; forms are then sent to him which he must fill out and completely and correctly and return before his application will

be considered. *Id.* at § 7.4b. Once the forms are returned to the Center, the director is to review the forms and determine whether the requested computer time will be classified as "Internal or External Time." *Id.* at § 7.4b3. Time that is classified as "External Time" requires that the professor or director of the research project make arrangements through the Business office of the University for fee-payment for the use of the computer time. *Id.* Once these arrangements are made, the Computer Center Director and the professor or project director will, together, arrange a time schedule for using the computer facilities in the research project. *Id.* at § 7.4b4.

There are similarly detailed regulations specifying the procedures and conduct of faculty members with respect to obtaining Grants-in-Aid for Advanced Study for Staff Members. *Id.* at § 4.07.[40]

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[40] Other Universities have similarly detailed *internal regulations.* At the University of Wisconsin, for example, if a professor needs funds to support research, he must carefully follow the procedures enumerated in a University publication entitled SOLICITING AND ADMINISTERING EXTRAMURAL SUPPORT (Guidelines on Soliciting and Administering Extramural Support; Contract, Grant and Gift Supported Research, Training, Construction, Conferences, Institutes, etc.; November 1, 1965; The University of Wisconsin). This document covers over 20 separate details with which the professor must comply when he is applying for funds.

If the proposed project requires any change in currently assigned facilities, the professor must obtain and fill in a University Form UW-SR1 (GUIDELINE ON SPACE AND REMODELING REQUESTS; POLICY AND PROCEDURE ATTENDANT TO APPLICATION, EVALUATION AND PROCESSING; 1 August 1966; The University of Wisconsin). This booklet is a highly detailed document which contains instructions like:

> NOTICE: The UW-SR1 form distribution described here and the illustrated form on p. 14 are of the newly revised form.
>
> Until the present supply is exhausted, would you please prepare two sets of the existing form.

(*continued on next page*)

(ii) *External* regulations imposed by the Federal Government.

After complying with these internal regulations, the professor must turn next to the external regulations—those of the agency from which he wants funds. The Department of Health, Education and Welfare, has funded about 29% of the grants received by American Universities. *C. Kerr, The Uses of the University* 53 (1964). One of its divisions, the Public Health Service has 13 separate documents which a professor must fill out or read before he obtains the grant, furnished under the title *Department of Health, Education, and Welfare, Application for Public Health Service Grant or Award* (herein cited as *HEW Application*).

(This will give you 2 pink, 2 white, and 2 yellow copies to use in place of the revised set of 3 pink, 1 yellow and 1 white.)

On page 14, you will note that the revised form is identified on the bottom right hand corner by "Rev. 5-66".

There are 12 pages of detailed instructions which explain how to fill in Form UW-SR1. The professor must be careful to submit this form according to the schedule on page 2 of SPACE AND REMODELING REQUESTS or he may find that his project, although funded, has not met the requirements of the Space and Remodeling Policies Committee.

After complying with the UW-SR1 form, the professor must return to the 20-page GUIDELINE ON SOLICITING AND ADMINISTERING EXTRAMURAL SUPPORT. He then must fill out a Transmittal Form. This form must be received and approved by the Departmental Chairman, Dean, Chancellor, and the Transmitting Officer. This form has its own deadline (independent of the deadline schedule for Form UW-SR1) which is twenty days prior to the Federal Agency's deadline.

These publications and those cited *infra* p. 33, n. 7, are among the materials judicially noticed in *Soglin* v. *Kauffman*, pp. 21-22, *supra*. They are in the library of the Court of Appeals for the Seventh Circuit.

The Public Health Service Grants are governed by 42 C.F.R. Parts 52, 53, 57, 61, 63, and 64. Part 52 alone contains over twenty-three separate sections within five major sub-parts. There are seven different forms and over twenty copies which must completed. In addition, the professor must be aware of the Changes in Deadline Sheets[41] and Errata Sheets[42] which accompany each form. For example,

> *Page 1, item 2, Typing and Assembly*—Applications should be collated into five complete sets, rather than 4 complete sets and one set of printed pages only.[43]

B. Relations With the State and the Functions of the Non-University Respondents.

The University is operated under the control of the respondent State Board of Education, *Tenn. Code Ann.* § 49-3213, and of course receives substantial share of its budget from the State of Tennessee.

The State Board of Education has, by statute, plenary power over the University (there being no statutory delegation of authority to the University administration). A compilation of the statutory powers, duties, and authorities of the Board and respondent Commissioner of Education is included as an addendum to this brief. This compilation shows that regardless of what view one takes of the function of the University, there are no "ivory tower" overtones involved in considering whether these governmental agencies should be required to write its regulations with specificity. Regulating in detail is their business.

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[41] HEW Application, *Notice, Change of Deadlines.*

[42] HEW Application, *Errata Sheet—Changes in Instructions for Completing Form PHS-398 (Revised 1/65).*

[43] *Id.*

Whether made by the President or his superiors, the decision to be vague and unspecific should be understood as a policy decision. It should be evaluated as legislation. The Legislature has invested the respondents Commissioner and State Board with regulatory power. This power, whether or not further delegated to the University, should be exercised in conformity with the same constitutional standards as required of the Legislature. The state cannot avoid constitutional restraints by filtering the rule-making process through several levels. The administrators are subject to the vicissitudes of appointive politics, and they, the Board, and Commissioner, with an eye to the annual legislative appropriation, may feel called upon to retain arbitrary power to check any campus activity that might offend their benefactors.[44]

C. Connections with the Private Sector.

The unarticulated premise of the district court's opinion is that the University should be free from "the exigencies of the market place." This image of insulation is a necessary premise to the conclusion that constitutional principles applicable to other governmental agencies (whose business is involvement with private individuals and groups) should be inapplicable here. Yet Tennessee State University does not bear this image of isolation. The University encourages and actively seeks involvement in the "outside world," in the private sector of society. When

[44] And the Governor (also a respondent), to whom they owe their appointments, is, according to current news reports, very much trying to be in the business of regulating campus expression. See "Gov. Buford Ellington Bans Disloyalty, But None Found." Atlanta *Journal & Constitution*, Nov. 2, 1969, at 2-D, cols. 2-4:

> The governor, in issuing his prohibition against disloyal talk on the campus did cite one alleged example . . .

an individual accepts appointment to the faculty of Tennessee State University he also accepts and pledges his personal efforts to fulfill:

> The obligation to accept responsibility for performing certain public services. Serving as professional consultants for outside institutions and agencies by invitation is an illustration of one type of public service. *Faculty Manual* § 4.01r.

The thread running through all of the University's "academic" activities is job training. See pp. 24-25 *supra*. Consider also the mandatory placement service, the Agricultural Extension Service, and the testing bureau, p. 23 *supra*.

The picture is no longer one of academic or agricultural-industrial man.[45] There are extremely few of the former

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[45] Other state universities have undertaken an even more ambitious program of services and interaction with the private sector. The University of Wisconsin, for example, has created and maintained a University-Industry Research Program to render services to industry. See, *e.g.*, (a) THE UNIVERSITY OF WISCONSIN, UNIVERSITY-INDUSTRY RESEARCH PROGRAM, KNOWLEDGE FOR WISCONSIN SOCIETY UIR; (b) UNIVERSITY OF WISCONSIN, UNIVERSITY-INDUSTRY RESEARCH PROGRAM, INFORMATIONAL SERVICES DIVISION; (c) THE UNIVERSITY OF WISCONSIN DIRECTORY OF RESEARCH FACULTY IN ENGINEERING, MATHEMATICS AND PHYSICAL SCIENCES 1968, UNIVERSITY-INDUSTRY RESEARCH PROGRAM, GRADUATE SCHOOL; (d) THE UNIVERSITY OF WISCONSIN DIRECTORY OF RESEARCH IN THE BIOLOGICAL SCIENCES 1964, UNIVERSITY-INDUSTRY RESEARCH PROGRAM, GRADUATE SCHOOL. Through this program, the University of Wisconsin has according to these published materials, recently (1) developed an automatic seam tracker to guide welding machines for a firm, Milwaukee's A. O. Smith Corp., in the automotive business; (2) donated a hybrid computer to aid in designing a hydrofoil boat; (3) lent specialized research equipment in the College of Engineering to improve a company's vacuum-sealed electrical switches.

remaining. There are many "full-time" university staff members doing only outside research. Faculty members serve as consultants to the private sector. Such service is one of Dr. Kerr's "uses" of the University. *Kerr, supra* at 42-44.[46]

Although federal regulations may not be involved, the internal regulations of Tennessee State regarding private grants remain the same.

D. THE UNIVERSITY AS A MUNICIPALITY.

The central purpose of the 1862 Morrill Act, 12 Stat. 503, 7 U.S.C. §§ 301-05, 307, 308 was to create colleges and universities responsive to the public. The purpose of the land grant college was not to be an ivory tower, an isolated island of instruction, but rather to interact, to combine with, and be an integral part of the activities of the state and the nation.

Tennessee State University is a Land Grant institution. *Catalogue* 23. It functions for the state as an agency of state government and also provides municipal government-like services to campus community. See the examples at p. 23 *supra*.

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[46] See also J. K. GALBRAITH, THE NEW INDUSTRIAL STATE, 282, 291-92, 370-71 (1967).

> Most directly nurtured by the industrial system are the educators and scientists in the schools, colleges, universities and research institutions. They stand in relation to the industrial system much as did the banking and financial community to the earlier stages of industrial development. *Id.* at 282.

E. The Particular, But Not So Particular, Characteristics of the Negro University.[47]

A generation after the Civil War the southern states began to establish "Agricultural", "Industrial", "Technical", and/or "Normal" institutions to train Negroes to take their place in the segregated society. Trustworthy overseers were installed to keep order and mete out sub-professional training for useful but intellectually undemanding occupations and of course to produce Negro teachers for the Negro schools so the cycle could remain closed. Negroes, thought to be intellectually inferior, and at all costs to be kept socially and economically inferior, were not to be ex-

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[47] The historical facts and conclusions in this subsection are a composite from the following sources, all hereinafter cited by author's or editor's name: H. M. Bond, The Education of the Negro in the American Social Order (1934); H. A. Bullock, A History of Negro Education in the South (1967); Crosby, *New Directions in Educating the "Disadvantaged,"* in Higher Education for the Disadvantaged 21 (1968); Higher Education Among Negroes (T. McKinney ed. 1932); D. Matthews and J. Prothro, Negroes and the New Southern Politics 412-25 (1966); E. McGrath, The Predominantly Negro Colleges and Universities in Transition (1965); 2 G. Myrdal, An American Dilemma: The Negro Problem and Modern Democracy (3d ed. 1944); C. G. Woodson, The Mis-Education of the American Negro (1933); Graham, *The Hampton Institute Strike of 1927, A Case Study in Student Protest,* 38 Am. Scholar 668 (1969); Jencks & Riesman, *The American Negro College,* 37 Harv. Educ. Rev. 3 (1967).

See E. M. Morgan, Basic Problems of Evidence 360 (1962): "in most instances the historical fact is a subject of judicial notice"; *accord, Morris* v. *Harmer's Heirs' Lessee,* 32 U.S. (7 Pet.) 554, 558 (1833). The judicial use of southern history in the racial context is illustrated by *United States* v. *Louisiana,* 225 F. Supp. 353 (E.D. La. 1963), *aff'd,* 380 U.S. 145 (1965). See *United States* v. *Mississippi,* 229 F. Supp. 925, 998 (S.D. Miss. 1964) (dissenting opinion), *rev'd,* 380 U.S. 128 (1965).

posed to the abstractions of liberal arts or the economic benefits of education for the professions.[48]

This early Negro education has been termed an "experiment," to determine

> whether or not millions of Negro Americans could be trained to function effectively as a caste in a society that would otherwise be democratic, and whether or not they could be made to remain satisfied with their condition. *Bullock* 167.

Above all, the beneficiaries of this higher training, as the future leaders of the subservient race and the future overseers of the training of succeeding generations, were to have instilled in them those values which would preserve the status quo. At the pinnacle of these values is blind obeisance to authority—regardless of the legitimacy of that authority it is "sacrosanct". (see A. 117-18.)[49]

Literal compliance with the thirteenth amendment demanded new forms if the attributes of slavery were to be retained;[50] the southern white was not lacking in initiative. Standing at the opposite pole from these values are the

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[48] See CROSBY. 22-23; MCGRATH 11, 72-73; MYRDAL 889-90; WOODSON *passim;* Jencks 19, 29. The small professional cadre was (and is) more likely to have come from the private Negro universities not included in this analysis.

[49] At this Negro university disrespect for authority is said to be more serious than gambling, smoking marijuana, participating in a panty raid, or possessing a chain to be used as a weapon (A. 117-18). When disrespect for authority was compared with grand larceny the Dean was not "prepared to answer that" (A. 118).

[50] Minimal literal compliance of course is not sufficient. See *Jones* v. *Alfred H. Mayer Co.*, 392 U.S. 409 (1968); *United States* v. *Jefferson County Board of Education*, 372 F.2d 836, 872-73 (1966), *aff'd en banc*, 380 F.2d 385 (5th Cir.), *cert. denied*, 389

principles of the first amendment. See, *e.g.*, *Shelton* v. *Tucker*, 364 U.S. 479 (1960); *Sweezy* v. *New Hampshire*, 354 U.S. 234, 250 (1957).

Carter G. Woodson summarized the situation:

> The main difficulty with the education of the Negro, however, is that it has been largely imitation. Somebody outside of the race has desired to do with Negroes something which interested him and his co-workers; and Negroes, being objects of charity, have received them cordially and have done what they were required. In fact, the keynote in the education of the Negro has been to do what he is told to do. Any Negro who has learned to do this is well prepared to function in the American social order as others would have him. Woodson, *Twenty-five Years of Higher Education Among Negroes*, in McKinney, *supra* at 15, 22.[51]

Student dissent could not be tolerated; it "was regarded as a defect of character." Graham 670.[52]

As the record here shows, Tennessee A. & I. State University for Negroes has continued to run under the momen-

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U.S. 840 (1967); Kinoy, *The Constitutional Right of Negro Freedom*, 21 RUTGERS L. REV. 387 (1967). *Cf. Alexander* v. *Holmes County Bd. of Educ.*, 90 S. Ct. 29 (1969).

[51] See also MYRDAL 732, 889-90; WOODSON *passim*; Graham 671; Jencks 5, 7, 16-18, 21-23, 27.

[52] It is not the hundreds of dedicated Negro educators who are to blame for the problems—that they have done as well as they have under the pressures of white southern legislatures and boards of education attests to their fortitude. The pressure is clearly seen. *Dixon* v. *Alabama State Bd. of Educ.*, 294 F.2d 150 (5th Cir.), *cert. denied*, 368 U.S. 930 (1961); *Johnson* v. *Branch*, 364 F.2d 177 (4th Cir. 1966). See MATTHEWS 425; Jencks 17. The administrators need the aid of the federal courts to give them the freedom to allow student freedom.

tum of this legacy of slavery.[53] This heritage produces weird perversions of salutary principles and institutions: The President refers to his "academic freedom as an administrator"[54] (Booth F.A.C. 67); he is rigidly bound, even in day-to-day minutiae, by the rules of the school's accrediting agency, which rules are, he says, too arcane to disclose, summarize, or even discuss with lawyers and judges (A. 69-71). Concepts having no place in the university context come to the fore: The thoroughly discredited[55] *in loco parentis* doctrine pervades (the President refers to college students as "children") (A. 85; Booth F.A.C. 12); the President says that non-academic matters (guidance and rehabilitation) are "ninety percent of what the school is all about" (A. 86); faculty members are instructed to "take it upon themselves to educate the student body in the area of personal grooming, cleanliness and so forth" (A. 91).[56]

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[53] "[N]othing has been done to dismantle effectively the dual system so graphically illustrated by the enrollment at Tennessee A & I State University." *Sanders* v. *Ellington*, 288 F. Supp. 937 (M.D. Tenn. 1968) (Gray, J.) (ordering a plan of desegregation). The problems remain in other Negro universities. See BULLOCK 285; Jencks *passim*. Compare the pro-civil rights attitudes of Negro students found by MATTHEWS 413 with their expulsions for civil rights activities in *Dixon* and *Knight*.

[54] The faculty members who testified doubted the existence of much academic freedom for faculty and students (see A. 56-57, 90-91).

[55] See, *e.g.*, Van Alstyne, *The Judicial Trend Toward Student Academic Freedom*, 20 U. FLA. L. REV. 290, 292-95 (1968); Symposium, *Legal Aspects of Student-Institutional Relationships*, 45 DENVER L.J. 497-678 (1968).

[56] And seventy of its 4700 students are summarily dismissed at the year's end. But at the 30,000-student University of Texas a year produces only thirteen major alleged offenses. Wright, *The Constitution on the Campus*, 22 VAND. L. REV. 1027, 1083 (1969).

Jencks and Riesman, writing from the perspective of the Ivy League refer to the Negro college of the 1950's as a "caricature of white higher education," Jencks 21, or "perhaps it would be more accurate to say . . . a living reminder of how bad most white colleges in an earlier era had been—and a few still are," *id.* It is submitted, though, that McGrath is even more "accurate" in saying "each [Negro college and university] could be matched with another American college and university." *McGrath* 156. "Reflection" would be a more accurate term than "caricature." See, *e.g.*, the outrageous insensitivity to rights of expression displayed by the administrators of the white college in *Dickey* v. *Alabama State Board of Education*, 273 F. Supp. 613 (M.D. Ala. 1967), *vacated as moot sub nom. Troy State University* v. *Dickey*, 402 F.2d 505 (5th Cir. 1968); the "blatant political censorship" by the university President in *Brooks* v. *Auburn University*, 296 F. Supp. 188, 194 (M.D. Ala.), *aff'd*, No. 27,316 (5th Cir. July 8, 1969) (court of appeals declining, however, to perceive the "censorship").[57]

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[57] The record in *Norton* v. *East Tennessee State Univ.*, No. 19,107 (6th Cir. argued June 9, 1969) (involving a white school) reveals the same atmosphere as that prevailing at Tennessee State University.

School administrators regardless of race, are peculiarly resistant to the demands of the Constitution. For example, 25 years after the *West Va. Bd. of Educ.* v. *Barnette*, 319 U.S. 624 (1943) the following appeared:

> The superintendent [of schools, Syracuse, N.Y.] said there has been a limited number of "recalcitrants" both black and white, who refuse to salute the flag during the mandatory, daily pledge of allegiance. Atlanta Journal, Dec. 3, 1968, at 4-C, col. 8 (AP dispatch).

3. *On the Nature of the University, Its Norms of Conduct, and Its Punitive Sanctions.*

The concepts of vagueness and overbreadth are most often applied in the criminal law. This is where society most directly proscribes conduct and provides severe penalties to enforce conformance to its norms. But the state also provides many non-criminal punitive sanctions to enforce conformance to these norms. Professor Amsterdam has noted that the vagueness doctrine:

> determines, in effect, to what extent the administration of public order can assume a form which, first, makes possible the deprivation sub silentio of the rights of particular citizens and, second, makes virtually inefficacious the federal judicial machinery established for the vindication of those rights.[58]

And the doctrines of vagueness and overbreadth in the area of the first amendment mediate between "*all the organs of public coercion of a state* and . . . the institution of federal protection of the individual's private interests."[59]

The point is that not only the criminal statutes of a state are subject to the substantive limitations on state power expressed in the vagueness and overbreadth doctrines. See *Giaccio* v. *Pennsylvania*, 382 U.S. 399 (1966). One must look to (1) the nature of the governmental agency which promulgates, enforces, and adjudges violations of norms of conduct, (2) the nature of the conduct the state seeks to proscribe, and (3) the types of sanctions or pen-

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[58] Note, *The Void for Vagueness Doctrine in the Supreme Court*, 109 U. PA. L. REV. 67, 81 (1960).

[59] *Id.* (emphasis added).

alties attached to violation of these norms. This must be done with a realization that substantive first amendment interests are the highest of safeguards to individual liberty.

a. THE NATURE OF THE GOVERNMENTAL AGENCY.

The University is not an "ivory tower of scholars," that might allow immunity to the restrictive protection of the first amendment. It is questionable whether Tennessee State University was ever intended to be such a "community". And full university involvement in the world around it may be praiseworthy.[60] But the "ivory tower" myth upon which a university may urge its exemption from the vagueness-overbreadth safeguard is but a myth.

Formulating standards and norms for the matters involved here requires no more "expertise" than dealing with like problems in the parallel community. And if application of these standards requires some expertise, the place to find it is the university, having at its disposal the combined knowledge of hundreds of scholars. "Expertise" is usually a criterion that relates an administrative agency to its fact-finding functions. But we are dealing here not with fact-finding, but with the formulation and articulation of standards, a business of the scholar. The ordinances of a small town are subject to no lesser constitutional standard than those of a metropolis. Yet the university's store of

[60] The American [university] system is particularly sensitive to the pressures of its many particular publics. Continental and British universities are less intertwined with their surrounding societies than the American and thus more inward-looking and self-contained. When "the borders of the campus are the boundaries of our state," the lines dividing what is internal from what is external become quite blurred; taking the campus to the state brings the state to the campus. C. KERR, THE USES OF THE UNIVERSITY, 26-27 (1964).

expertise and competence far outstrips that of the town council.

Universities comply every day with complex, pedantic, stringent legal requirements imposed by the federal government and its agencies.

The University has promulgated a detailed administrative code relative to faculty conduct, promotions, and relations with students. The University has formulated and published detailed regulations governing student activities. The disciplinary regulations, however, remain vague and overbroad.

The modern public university is hybrid. It is a municipality, a corporation, a school, and more. *Cf. Marsh* v. *Alabama,* 326 U.S. 501 (1946). It might be inappropriate for a federal court to interfere with the formulation of curricula,[61] a "school" function. But it does not follow that when the university is acting as a municipality—as a legislature, policeman, prosecutor, judge, and jury—it should not be required to perform substantially as must its other governmental counterparts. And that requires that the rules, regulations, practices and policies of the University governing non-academic student conduct, violations of which may result in dismissal, be tested by the vagueness and overbreadth concepts of the first and fourteenth amendments.[62]

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[61] But not necessarily entirely so, see, *e.g., Epperson* v. *Arkansas,* 393 U.S. 97 (1968).

[62] Universities faced with unruly or violent student protests have not hesitated to announce their intentions to call in outside police. This is not an unreasonable reaction, but it is yet another step away from the university as an isolated entity, capable of solving its own problems without outside help. It is poor grace to invoke

b. THE NATURE OF THE NORMS OF CONDUCT.

Here a challenge to the University's authority to regulate academic performance is not involved. Nor is there involved the vagueness or overbreadth of rules concerning academics or the violation of regulations for which students are not subjected to serious penalties.[63]

The key protection of the vagueness doctrine is that the state must advise, *in advance*, what conduct will give rise to the imposition of penalties.[64]

The protection of the overbreadth doctrine is that the state may not, while regulating within its power, also restrict the exercise of first amendment rights. If a regulation is overbroad, it is stricken without regard to the activity of the individual involved.

There is far more to fear from the tyranny of improper state action than from the aberrant conduct of an individual. Hence the overbreadth doctrine frees the individual from the "imponderables and contingencies" of defending against charges under overbroad, general dragnet laws where form of speech may be imperiled. *Dombrowski* v. *Pfister*, 380 U.S. 479, 486 (1965).

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on the one hand the police power while pressing with the other the elitist notion that its students should not seek refuge in the courts and Constitution.

[63] We need not consider, for example, rules which could only result in the student being reprimanded or placed on probation. The complexities of whether one or more non-serious disciplinary sanctions, taken without constitutional safeguards, could serve as a partial predicate for later dismissal need not be dealt with. In any event there could be a clear delineation between rules providing severe non-academic penalties (*e.g.*, dismissal and other rules, once it is determined what penalties will be considered severe.

[64] The classic formulation is in *Connally* v. *General Construction Co.*, 269 U.S. 385, 391 (1926).

"[T]he single most important principle in applying the Constitution should be that discipline cannot be administered on the basis of vague and imprecise rules." Wright, *supra*, 22 Vand. L. Rev. at 1063[65] The district court's result here is thoroughly criticized. *Id.* at 1060-66.[66]

Uncertainty as to the rules was found to have increased the difficulties during the troublous times at Berkeley in 1964, and to have been a "principal cause" of the recent troubles at Columbia. *Id.* at 1063.

c. THE NATURE OF THE PUNITIVE SANCTIONS.

As already noted, the sanction, dismissal from the University, is harshly penal.

> It requires no argument to demonstrate that education is vital and, indeed, basic to civilized society. Without sufficient education [students] would not be able to earn an adequate livelihood, to enjoy life to the fullest, or to fulfill as completely as possible the duties and responsibilities of good citizens. *Dixon* v. *Alabama State Board of Education*, 294 F.2d 150, 157 (5th Cir.), *cert. denied*, 368 U.S. 930 (1961).

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[65] The danger is cited that a university might proceed "indirectly" on some such ground as "bizarre clothes" against one who "expresses unpopular political views." One of the grounds of the complaint here was that these dismissals were motivated by the University's desire to suppress plaintiff's views (A. 10-11). The F.A.C. justified its dismissal of plaintiff Booth partially on its finding of how he "dressed himself" (Report of Findings and Decision, Exh. M to Complaint).

[66] Professor Wright goes on at 1066-67 to express doubt as to whether the overbreadth doctrine, as opposed to vagueness should apply. The question is purely academic for this case, as the regulations involved are hopelessly deficient under either term. He appears to be using a slightly different delineation between the terms than that used herein, pp. 45-46 *supra*. As a practical matter he is concerned with the "hard-core conduct" problem, a problem not present in this case as Jones' activity was pure speech.

B. First and Fourteenth Amendment Rights, Including the Right to Be Free of Vague and Overbroad Regulation, Are Available to Students. "It Can Hardly Be Argued That Either Students or Teachers Shed Their Constitutional Rights to Freedom of Speech or Expression at the Schoolhouse Gate." *Tinker* v. *Des Moines School District*, 393 U.S. 503, 506 (1969).

> The Fourteenth Amendment, as now applied to the States, protects the citizen against the State itself, and *all of its creatures—Boards of Education not excepted.* These have, of course, important, delicate, and highly discretionary functions, but *none that they may not perform within the limits of the Bill of Rights.* That they are educating the young for citizenship is reason for scrupulous protection of Constitutional freedoms of the individual, if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes. *West Virginia Board of Education* v. *Barnette*, 319 U.S. 624, 637 (1943).

The recital, in *Tinker* v. *Des Moines School District*, 393 U.S. 503, 505-07 (1969), of the history of the first amendment in the schools led to:

> School officials do not possess absolute authority over their students. Students in school as well as out of school are "persons" under our Constitution. They are possessed of fundamental rights which the State must respect, just as they themselves must respect their obligations to the State. 393 U.S. at 511.

And:

> Under our Constitution, free speech is not a right that is given only to be circumscribed that it exists in principle but not in fact. Freedom of expression would not truly exist if the right could be exercised only in an area that a benevolent government has provided as a safe haven for crackpots. The Constitution says that Congress (and the States) may not abridge the right to free speech. This provision means what it says. We properly read it to permit reasonable regulation of speech-connected activities in *carefully restricted circumstances*. 393 U.S. at 513 (emphasis added).

Freedom from blunderbuss regulation has never appeared to be other than one of the "fundamental rights which the State must respect." Nor are the vagueness and overbreadth doctrines strangers to the campus. This Court has time and again held the states to stringent standards of specificity in the teachers' loyalty oath cases. See, *e.g.*, *Whitehill* v. *Elkins*, 389 U.S. 54 (1967); *Keyishian* v. *Board of Regents*, 385 U.S. 589 (1967); *Elfbrandt* v. *Russell*, 384 U.S. 11 (1966); *Baggett* v. *Bullitt*, 377 U.S. 360 (1964); *Cramp* v. *Board of Public Instruction*, 368 U.S. 278 (1961).

In a series of quite recent cases the district courts, in a surprising show of unanimity, have brought the vagueness doctrine to the campus to invalidate restrictions on outside lecturers. *Smith* v. *University of Tennessee*, 300 F. Supp. 777 (E.D. Tenn. 1969); *Brooks* v. *Auburn University*, 296 F. Supp. 188 (M.D. Ala.) *aff'd*, 412 F.2d 1171 (5th Cir. 1969); *Stacy* v. *Williams*, No. WC 6725-K (N.D. Miss. Jan. 14, 1969) (3-judge court); *Snyder* v. *Board of Trustees*, 286 F. Supp. 927 (N.D. Ill. 1968) (3-judge court);

Student Liberal Federation v. *Louisiana State University*, Civ. No. 68-300 (E.D. La. Feb. 15, 1968); *Dickson* v. *Sitterson*, 280 F. Supp. 486 (M.D.N.C. 1968) (3-judge court).[67]

These cases recognize that the appropriate question is not whether it is a civil or criminal sanction involved, but whether the state or the university[68] was regulating in the first amendment area.[69] This is reasonable—the first amendment says "no law," not "no criminal law." It is in accord with the decisions of this court. See *Schneider* v. *Smith*, 390 U.S. 17 (1968); *United States* v. *Robel*, 389 U.S. 258 (1967);[70] *Aptheker* v. *Secretary of State*, 378 U.S. 500, 516-17 (1964). The Court was explicit in *Giaccio* v. *Pennsylvania*, 382 U.S. 399, 402 (1966):

> Both liberty and property are specifically protected by the Fourteenth Amendment against *any state deprivation* which does not meet the standards of due process, and this protection is not to be avoided by the simple label a State chooses to fasten upon its conduct

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[67] To the same effect, see *Buckley* v. *Meng*, 35 Misc. 2d 467, 230 N.Y.S. 924 (Sup. Ct. 1962).

[68] *Brooks* involved purely internal university policy. In *Snyder* administrative regulations were struck down along with the statute. 286 F. Supp. at 936.

[69] Vagueness and overbreadth doctrines require that regulations "not deter by threat of regulation or punishment the exercise of protected speech . . . ." *Brooks*, 296 F. Supp. at 194. These doctrines apply to state's method "for regulating the exercise of First Amendment freedoms . . . ." *Snyder*, 286 F. Supp. at 936.

[70] *Schneider* and *Robel* illustrate the fallacy of refusing to apply the doctrines based on a policy of not burdening cherished institutions, for these cases strongly rejected any implication that considerations of national defense necessitated any invasion of the first amendment area.

> or its statute. So here this state Act, whether labeled "penal" or not, must meet the challenge that it is unconstitutionally vague. (Emphasis added.)

The Seventh and Eighth Circuits have recently split on the question of whether vagueness-overbreadth doctrines apply for students. *Compare Soglin* v. *Kauffman*, No. 17,427 (7th Cir. Oct. 24, 1969), *aff'g* 295 F. Supp. 978 (W.D. Wis. 1968), with *Esteban* v. *Central Missouri State College*, No. 19,565 (8th Cir. Aug. 28, 1969), *aff'g* 290 F. Supp. 622 (W.D. Mo. 1968).[71]

In *Soglin* the district court and the court of appeals squarely applied the constitutional principles of vagueness and overbreadth to university regulations.

The ten student plaintiffs in *Soglin* sought declaratory and injunctive relief that certain regulations of the University of Wisconsin at Madison were unconstitutional on their face or as applied.[72] The district court held, and the

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[71] In two other cases the district courts have alluded to the question. In *Buttny* v. *Smiley*, 281 F. Supp. 280 (D. Colo. 1968), the court indicated that the vagueness doctrine might apply, 281 F. Supp. at 284, but provided little discussion of why and to what extent, or why the "hazing" rule at issue was not invalidated. In *Hammond* v. *South Carolina State College*, 272 F. Supp. 947 (D.S.C. 1967) (cited with approval in *Tinker* v. *Des Moines School District*, 393 U.S. 503, 512 n. 6, 513 (1969), the court cast its invalidation of an overly broad regulation on student demonstrations in terms of "prior restraint." 272 F. Supp. at 950. Because the rule was held facially invalid, the "nature of the demonstration" was not examined. *Id.*

[72] The regulations stated a plenary guarantee of first amendment rights with the proviso: "They may support causes by lawful means which do not disrupt the operations of the University, or organizations accorded the use of University facilities." 295 F. Supp. at 983. Declaratory and injunctive relief was also sought

Court of Appeals agreed, that "misconduct" as a disciplinary standard violates the first and due process clause of the fourteenth amendments "by reason of vagueness and overbreadth." Slip opinion at 3.

Determination of the facial constitutionality *vel non* of the rules was held to be the appropriate first point of inquiry,[73] and:

> The thrust of cases such as *Dombrowski* lies in their attempt to counteract the "chilling effect upon the exercise of First Amendment rights" which may result from the very fact of prosecution. *Dombrowski* v. *Pfister*, 380 U.S. 479, 487 (1965). Administrative sanctions as harsh as those available to the University in this case, as well as criminal statutes, serve to chill the exercise of free speech. It is accordingly immaterial that this controversy involves a disciplinary rule rather than a criminal statute. Slip opinion at 4-5.

And, "turning to the merits," slip opinion at 5, the court made some observations about the university's "inherent authority" that should be self-evident but nevertheless are contrary to the universities' contentions both here and in *Soglin*:

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with respect to disciplinary proceedings based upon alleged "misconduct." Both standards were invalidated by the district court, 295 F. Supp. at 993-94; only the "misconduct" holding was appealed.

[73] This procedure also allows substantial judicial economy, as it allowed the case to be decided on the pleadings. The principle of avoiding constitutional questions where possible would not, either here or in *Soglin*, indicate a different procedure because the second contention is that the rules are unconstitutional as applied.

> They argue that "misconduct" represents the inherent power of the University to discipline students and that this power may be exercised without the necessity of relying on a specific rule of conduct. No one disputes the power of the University to protect itself by means of disciplinary action against disruptive students. Power to punish and the rules of defining the exercise of that power are not, however, identical. Power alone does not supply the standards needed to determine its application to types of behavior or specific instances of "misconduct." As Professor Fuller has observed: "The first desideratum of a system for subjecting human conduct to the governance of rule is an obvious one: there must be rules." Fuller, *Law and Morality*, p. 46 (2d printing, 1965). *Id.*

Esteban v. *Central Missouri State College*, *supra*, is to the contrary,[74] as is the same district court's *General Order*, *supra*, 45 F.R.D. 133, 146-47 (W.D. Mo. 1968). Judge Doyle in *Soglin* refers to the *Esteban* district court's citation of only one obscure reference work in support of its proposition, and no case law, and states: "I cannot agree that uni-

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[74] The *Esteban* district court does qualify its holding, leaving open the possibility of "exceptional circumstances." 290 F. Supp. at 630; 45 F.R.D. at 146. Perhaps a university or class of universities with a State-enforced history of suppression of dissent would be "exceptional." The history and current practice here should at any rate carry the burden of showing that a particular school measure was motivated by other than legitimate school concerns—for example, a desire to prohibit the expression of an unpopular point of view while permitting the dominant opinion. *Tinker* v. *Des Moines School Dist.*, 393 U.S. 503, 526 (1969) (Harlan, J. dissenting).

The Eighth Circuit likewise hedges: "We do not hold that any college regulation, however loosely framed, is necessarily valid." Slip opinion at 23. A regulation framed more "loosely" than those at issue here would be so loose it would have fallen apart.

versity students should be deprived of these significant constitutional protections on so slender a showing." 295 F. Supp. at 990. Similarly, the Court of Appeals for the Seventh Circuit explicitly declined to follow *Esteban*. Slip opinion at 7.

On precedent, on constitutional principle, and on policy analysis, the *Soglin* rationale should be preferred to that of *Esteban*. One of the reasons for the narrowness of view in *Esteban* is the failure to evaluate the nature and role of the public university today and to distinguish among its functions.[75]

C. Assuming Any Degree of Application of the Doctrine, Regulations Prohibiting "Disrespect for University Authority" and "Any Other Infractions of Standards of Conduct That Require Severe Disciplinary Action" Are, on Their Face, Unconstitutionally Vague and Overbroad.

Even if the doctrines of overbreadth and vagueness applied in relaxed fashion "disrespect for authority" and "any other infractions of standards of conduct that require severe disciplinary action" are so grossly vague, so exceedingly broad, that they must fall. As the facts here show involvement of first amendment rights cannot be ignored. The regulation may not be allowed to sweep in protected activity. *E.g.*, *Ashton* v. *Kentucky*, 384 U.S. 195, 200 (1966); *Cox* v. *Louisiana*, 379 U.S. 536, 552 (1965).

[75] Another of the reasons is failure to carefully analyze first amendment-related facts (*cf. Pickering* v. *Bd. of Educ.*, 391 U.S. 563, 578 (1968)), and misunderstanding of the nature and purpose of the constitutional doctrines of vagueness and overbreadth, as well as the function of the Civil Rights Act. See Circuit Judge Lay's dissent, slip opinion at 24-37.

It is not permissible to "presume that the statute curtails constitutionally protected activity as little as possible." *NAACP* v. *Button*, 371 U.S. 415, 432 (1963). It is only "possible" misapplication that need be evident. *Id.*

The F.A.C. is unconstitutionally "license[d] . . . to create its own standards in each case." *Herndon* v. *Lowry*, 301 U.S. 242, 263 (1937).

Only the most Kafkaesque logic could support "[a]ny other infractions of conduct that require severe disciplinary action" as a definition of an offense.[*]

"Disrespect for University authority" being less absurd is more pernicious. There have been few students who never complained of a teacher or administrator—the rule

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[*] Or perhaps the problem is more "Carrollesque":

> "There's glory for you!"
>
> "I don't know what you mean by 'glory,'" Alice said.
>
> Humpty Dumpty smiled contemptuously. "Of course you don't—til I tell you. I meant 'there's a nice knock-down argument for you!'"
>
> "But 'glory' doesn't mean 'a nice knock-down argument,'" Alice objected.
>
> "When I use a word," Humpty Dumpty said, in rather a scornful tone, "it means just what I choose it to mean—neither more nor less."
>
> "The question is," said Alice, "whether you can make words mean so many different things."
>
> "The question is," said Humpty Dumpty, "which is to be master—that's all."
>
> Alice was too much puzzled to say anything. . . . *L. Carroll, Alice's Adventures in Wonderland* 198 (Airmont ed. 1965).

When the President of the University was asked "When you say due process . . . what do you mean by this?" he replied, "I mean anything due process involves" (A. 76).

is a *carte blanche* authorization to dismiss most of the student body."[11]

The emphasis on respect for the sake of respect, rather than for the quality of the person or thing respected, appears as one of the relics of slavery remaining in the training of Negroes. See pp. 40-44 *supra*.

"Disrespect for University authority" does not "reasonabl[y] regulat[e] in carefully restricted circumstances." *Tinker* v. *Des Moines School District*, 393 U.S. 503, 513 (1969).

"University authority," from the Governor[12] through the football coach[13] cannot constitutionally be insulated from criticism. Criticism is often disrespectful, particularly as seen by its recipient.

II.

The University Violated Its Student's Right to Freedom of Speech, as Guaranteed by the First and Fourteenth Amendments by Applying Its Regulations to Dismiss Him for Handing Out a Leaflet. This Activity Should Be Governed by the Clear and Present Danger Test.

"The essentiality of freedom in the community of American universities is almost self-evident." *Sweezy* v. *New Hampshire*, 354 U.S. 234, 250 (1957) (referring to freedoms of "teachers and students"). It is also evident that uni-

[11] The peaceful wearing of a black armband in protest of war may well be considered disrespectful by the members of the Department of Aerospace Studies.

[12] *Dickey* v. *Alabama State Bd. of Educ.*, *supra*, 273 F. Supp. 613.

[13] *Curtis Pub. Co.* v. *Butts*, 388 U.S. 130, 154-55 (1967).

versities, particularly this University, do not all subscribe to this "essentiality." [50]

If a student can be suspended for handing out a leaflet,[51] his expression is less protected in his milieu than is expression in a park,[52] the state capitol grounds,[53] a bus station,[54] a privately owned town,[55] a shopping center,[56] or probably even a library.[57]

Again and again *Tinker* v. *Des Moines School District*, 393 U.S. 503 (1969) stated that students *do* have strong first amendment rights. It measured those high school students' rights against the "material and substantial interference" standard of *Burnside* v. *Byars*, 363 F.2d 744 (5th Cir. 1966). This was sufficient to vindicate their wearing of armbands.

The same standard is sufficient to vindicate Jones' handing out of his leaflet. Nothing either "material" or "sub-

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[50] [A]t [large] public universities attempts to establish student freedom have not yet been consummated.

Evidently, student academic freedom is neither practiced nor advocated to an unusual extent in the smaller public universities . . . . E. Williamson & J. Cowan, The American Student's Freedom of Expression 155-56 (1966).

[51] This being done in the face of the numerous cases affording universal protection to leaflet distributions. See, *e.g.*, *Murdock* v. *Pennsylvania*, 319 U.S. 105 (1943); *Lovell* v. *Griffin*, 303 U.S. 444 (1938); *Schneider* v. *New Jersey*, 308 U.S. 147 (1937).

[52] *See Niemotko* v. *Maryland*, 340 U.S. 268 (1951).

[53] *See Edwards* v. *South Carolina*, 372 U.S. 229 (1963).

[54] *See Wolin* v. *Port of New York Authority*, 392 F.2d 83 (2d Cir. 1968).

[55] *See Marsh* v. *Alabama*, 326 U.S. 501 (1946).

[56] *See Amalgamated Food Employees* v. *Logan Valley Plaza, Inc.*, 391 U.S. 308 (1968).

[57] *See Brown* v. *Louisiana*, 383 U.S. 131 (1966).

stantial" happened. Months passed before the University even complained.

By *Tinker's* own terms, Jones has even stronger protections available to him:

> But we do not confine the permissible exercise of First Amendment rights to . . . the four corners of a pamphlet . . . . 393 U.S. at 513.

Jones did confine his activity to "the four corners of a pamphlet." The least immediate incitement to disorder is the written word. Men do read and act but rarely with immediacy.

Nowhere in the record is there any but the vaguest "undifferentiated fear or apprehension of disturbance," *id.* at 508, of University functions."

The leaflet that so offended the administration was apparently born of the frustrations of Negro education, described pp. 40-41 *supra*. It was written perhaps crudely and inartfully, but with obvious feeling, by a student seeking that which the word "education" means to at least one Negro educator: "freedom to challenge and to demand an equal share in America . . . ." Crosby, p. 47 *supra* at 24.

Tinker's strong language should establish the first amendment rights of students. It would surely do so with hardly any need for recourse to the courts if conscientiously ap-

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[*] At most the University can point to the President's testimony that the leaflet was "inflammatory" (T. 245), intended to "get students all stirred up and not wanting to register" (T. 247) and was generally "harmful" (*id.*). Even this "undifferentiated fear" was not expressed until the district court hearing, if the D.A.'s relied on it they were going outside their record, (as they undoubtedly must have, see p. 76, *infra*).

plied by administrators sensitive to the spirit of the first amendment.

But it has not done so.

A single phrase may be seized upon, divorced from the spirit of the opinion, and exploited by those who would avoid the teaching of the case. The phrase: "any facts which might reasonably have led school authorities to forecast substantial disruption of or material interference with school activities . . . ." 393 U.S. at 514.

This harks back several steps behind the now largely discarded "balancing test." If the test were simply "material and substantial interference" we would have a degree of protection considerably short of "clear and present danger" but at least not as amorphous as an *ad hoc* balance.

But the reasonable "forecast" by school authorities blueprints a "nip it in the bud" technique for wiping out the rest of the opinion. The school officials act so early that nothing is clear let alone dangerous. Thus the consequences of the students' words or proposed action remain unknown. They testify that, based on their experience and expertise, substantial disruption can "reasonably" be forecast.[*] This testimony is given in the best of faith since it is the ingrained administrative response to deviations from routine.

[*] See, e.g., *United States v. Robel*, 389 U.S. 258, (1967); *Wood v. Georgia*, 370 U.S. 375 (1962).

[*] Actually it is not even necessary to act early. Even after delayed action and no disruption an expert might plausibly say that the reasonable probability of disruption was present. The vice of the scheme is not prompt action per se, but that there is never a neutral or countervailing expert to pass on whether it was reasonably necessary in the particular situation.

This one-phrase reading of *Tinker* produces a standard quite different from the opinion's exposition of first amendment principles. The result is not the "reasonableness-due process test" opposed in Mr. Justice Black's dissent, 393 U.S. at 519, but a "reasonableness-first amendment test." And, most importantly, the "reasonableness" is not determined by the courts, but by one of the adversaries, and then only subjectively.[9]

In any event so long as the test includes value judgments whether made by judges or administrators, first amendment cases will be prey to the sort of unsatisfactory resolution which produce statements such as:

> The majority here states the principles of decision in those cases correctly. My difficulty with the majority's opinion is that while quoting the essential balancing rule from the *Burnside* opinion, it overlooks the failure of the district court to apply that rule. The district court here did not attempt to balance the competing interests of plaintiffs in the free exercise of their constitutional rights against Illinois interest in conducting and maintaining an orderly, effective school system. *Scoville* v. *Board of Education*, No. 17,190 (7th Cir. Sept. 25, 1969) (Kiley, J. dissenting, slip opinion at 4).

[9] Obviously, Jones does not contend that *Tinker should* be read on this one-phrase basis. He does contend that there is real danger that it *will* be so read. *Cf.* the first amendment outrages during the first World War cited in Emerson, *Freedom of Expression in Wartime*, 116 U. Pa. L. Rev. 975, 981 (1968). It would be equally logical to read the case on the one-sentence basis of "This provision [the first amendment] means what it says," 393 U.S. at 513, and find in it a heretofore unprecedented general license to talk. But this has not been done, for constitutional liberties contract, they do not expand as the distance of the speaker from this Court increases.

Whatever the effect of the narrowing phrase in *Tinker*, a symbolic speech, junior high and high school, inside-the-classroom case, it should not be in the first amendment jurisprudence of cases involving the pure written speech of university students[92] outside the buildings. The clear and present danger test should be made explicit.[93]

College students, no less than school children, can be taught by example "to discount important principles of our government as mere platitudes," *West Virginia Board of Education* v. *Barnette*, 319 U.S. 624, 637 (1943). Additionally or alternatively, they may learn to turn away from established institutions and methods. See Schwartz, *Comment*, 45 Denver L.J. 525 (1969). Society has far more to fear from students nurtured under an oppressive "pall of orthodoxy"[94] than from the occasional discomfitures or even excesses that accompany our "profound national commitment"[95] to free expression.

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[92] The average age of college students being over 21, *Soglin* v. *Kauffman*, *supra*, 295 F. Supp. at 988, and substantially all of them being over 18 the question of whether "First Amendment rights of children are co-extensive with those of adults" is not involved. *Tinker* v. *Des. Moines School Dist.*, 393 U.S. 503, 515 (1969) (Stewart, J. concurring). There was no prior "order" defied or flouted and no distraction from "school work." *Id.* at 518 (Black, J. dissenting).

[93] It is noteworthy that the restrictions on distribution of leaflets at this University are greater than in the elementary and secondary schools of Philadelphia, where the only limitation on content is against

> material which is obscene according to *current legal definitions*; or which is libelous; or incites students so as to create a *clear and present danger* of the commission of unlawful acts on or of physical disruption to the orderly operation of the school. Philadelphia, Pa., Resolution of Board of Education, Sept. 30, 1968. (Emphasis added.)

[94] *Keyishian* v. *Board of Regents*, 385 U.S. 589, 603 (1967).

[95] *New York Times Co.* v. *Sullivan*, 376 U.S. 254, 270 (1964).

> [F]reedom of expression, far from causing upheaval, is more properly viewed as a leavening process, facilitating necessary social and political change and keeping a society from stultification and decay. *T. I. Emerson, Toward a General Theory of the First Amendment* 13 (1967).[26]

At Tennessee State University academic freedom is at a low ebb. This "leavening" is not allowed, and there is, if not "stultification," at least a chilling effect. The students are fearful of joining controversial organizations (A. 57-58) which, for them, includes the NAACP (A. 93).

III.

The Composition of the F.A.C., Its Methods of Inquiry, the Failure to Provide Adequate and Timely Notice, the Conviction of an Uncharged Finding, and the Availability of an Appellate Remedy Only From an Adverse Witness Denied Due Process.

A. Principles of Due Process for Students, the Alternatives Available, and the Uncharged Findings.

The due process rights of students have drawn from the cases as follows:

> The essential elements of fair procedure include (but may not be limited to) the following requirements:
>
> . . . . .
>
> (2) Where the rules are reasonably clear and their application does not depend upon uncontrolled discre-

[26] See also E. Williamson & J. Cowan, The American Students' Freedom of Expression 150-70 (1966); Mason, *Judicial Activism: Old and New*, 55 Va. L. Rev. 385, 406-10 (1969).

tion, a student still may not be seriously disciplined (as by suspension) unless:

(a) the student charged with an infraction has been furnished with a written statement of the charge adequately in advance of a hearing to enable him to prepare (*e.g.*, 10 days);

(b) the student thus charged "shall be permitted to inspect in advance of such hearing any affidavits or exhibits which the college intends to submit at the hearing";

(c) the student is "permitted to have counsel present at the hearing to advise [him]";

(d) the student is "permitted to hear the evidence presented against [him]," or at least the student should be given the names of the witnesses against him and an oral or written report on the facts to which each witness testifies;

(e) the student or his attorney may question at the hearing any witness who gives evidence against him;

(f) those who hear the case "shall determine the facts of each case solely on the evidence presented at the hearing";

(g) "the results and findings of the hearing should be presented in a report open to the student's inspection";[27]

[27] This obviously presupposes that the findings will be meaningful, *i.e.*, they will tell the student exactly what he has been disciplined for. Presumably the University complied with this requirement. The findings as to all three plaintiffs contain language referable to specific charges followed by generalized language identical in all three cases. The acting Chairman of the F.A.C. first

(h) "either side may, at its own expense, make a record of the events at the hearing."

These procedural safeguards roughly parallel some of the standards required by criminal courts in their disposition of offenses punishable by fine or short term imprisonment. The comparison is not fortuitous because it is now evident that expulsion or exclusion from college may, in the long run, disadvantage an individual at least as much as a single infraction of a criminal statute. There should be no surprise, therefore, that students are entitled at least to a similar degree of due process as a suspected pickpocket. Van Alstyne, *The Student as University Resident*, 45 Denver L.J. 582, 592-95 (1968) (footnotes omitted; quotations are from *Esteban* v. *Central Missouri State College*, 277 F. Supp. 649, 651-52 (W.D. Mo. 1967); and *Dixon* v. *Alabama State Board of Education*, 294 F.2d 150, 159 (5th Cir.), *cert. denied*, 368 U.S. 930 (1961).[25]

Professor Van Alstyne's citations indicate that these standards are reasonably well established in the lower federal courts. There is contrary authority, though—the district court's opinion in this case is cited as being in opposition to (a) (adequate time to prepare), *id.* at 593 n.25, and as a substantial diminution of (f) (determine facts

testified equivocally (A. 119), and then that he did not remember whether matters not specified in the findings were basis for the suspensions (A. 119). He did testify that all findings were based on offenses listed in the *Handbook* (A. 119).

[25] The genesis of the pickpocket analogy is Seavey, *Dismissal of Students: "Due Process,"* 70 Harv. L. Rev. 1406, 1407 (1957), relied upon in *Dixon*, 294 F.2d at 158.

To the same effect as this compilation of rights, see *Joint Statement* § VI; *ABA Statement* art. IX.

solely on the evidence) in that the combination of prosecutorial and adjudicatory functions makes it doubtful that the decision is based solely on the evidence, *id.* at 594 n.30. Although not so apparent from the face of the opinion, it is also contrary to (b) (advance inspection of exhibits).

One of the parameters of due process is the availability of alternative procedures. *Joint Anti-Fascist Refugee Committee* v. *McGrath*, 341 U.S. 123, 163 (1951) (Frankfurter, J. concurring). Here the University did not even follow its own required procedure[29] of bringing the charges before the Men's Senate (A. 43-44; *Handbook* 16). And of course no contention could be made that a disinterested panel could not be drawn from the hundreds of faculty[30] members and thousands of students at the University.

As to the F.A.C.'s supporting its dismissal upon the uncharged finding that Jones did not tell the truth at the hearing, the same principles that led to the second of the holdings in *In re Oliver*, 333 U.S. 257, 273-78 (1948) apply:

> [F]ailure to afford the petitioner a reasonable opportunity to defend himself against the charge of false and evasive swearing was a denial of due process of law. *Id.* at 273.

Although Oliver's trial suffered the additional infirmity of being secret, Jones had no greater "opportunity to be heard", *id.* Since this right is "basic in our system of jurisprudence" there should be no distinction based on the fact

[29] But apparently an often ignored procedure (see A. 72-74).

[30] In fact, any distinction based on the nature of the proceeding might operate in Jones' favor, as *Oliver* was a contempt proceeding

that Oliver was a criminal case.[109] See also *Cole* v. *Arkansas*, 333 U.S. 196, 201-02 (1948).

Assuming any constitutional right to fair procedures in student disciplinary matters, this "untruth" finding is patently unconstitutional. The effect of this unconstitutionality should, by analogy to the principle of *Stromberg* v. *California*, 283 U.S. 359 (1931) be to taint the entire result. See also *Street* v. *New York*, 394 U.S. 576 (1969); *Gregory* v. *City of Chicago*, 394 U.S. 111 (1969); *Cole* v. *Arkansas*, 333 U.S. 196, 201-02 (1948).

Both of the findings—the uncharged untruthfulness and the distribution of leaflets after the initial unsupportable suspension—come suspiciously late. It is as if they were "invoked strictly as an afterthought"[110] or were based on "subsequent rationalizations of . . . counsel."[111]

in which procedural safeguards have historically been somewhat attenuated, see, e.g., *United States* v. *Barnett*, 376 U.S. 681 (1963).

[109] *Hadnott* v. *Amos*, 295 F. Supp. 1063, 1074 (M.D. Ala. 1968) (Johnson, J. dissenting), *rev'd*, 394 U.S. 358 (1969). Cf. the summary treatment of the school authorities' stated afterthought grounds for suspension in *Dixon* v. *Tatum*, 301 F. Supp. 60, 63 n.3 (N.D. Ala. 1969).

[110] *Trailways of New England, Inc.* v. *CAB*, 412 F.2d 926, 941 (1st Cir. 1969), citing *Burlington Truck Lines, Inc.* v. *United States*, 371 U.S. 156, 168-69 (1962). Petitioners Reply Brief on Petitions for Writ of Certiorari herein was devoted largely to pointing out examples of "appellate counsel's post hoc rationalizations", 371 U.S. at 168, and their recasting of the facts.

B. Jones Was Deprived of Due Process in That the Members of the Tribunal Had Initiated, Investigated and Drawn the Charges and It Was Their Practice to Act Also as Witnesses, and the Reviewing Authority Was an Intensely Interested Party and a Sharply Controverted Witness.

In the present case the trier of fact was the same body that was also both the victim of appellant's statements and the prosecutor that brought the charges aimed at securing his dismissal. . . .

Appellant requests us to reverse the state courts' decisions upholding his dismissal on the independent ground that the procedure followed above deprived him of due process in that he was not afforded an impartial tribunal. However, appellant makes this contention for the first time in this Court. . . . Because of this, we decline to treat appellant's claim as an independent ground for our decision in this case. On the other hand, we do not propose to blind ourselves to the obvious defects in the fact-finding process occasioned by the Board's multiple functioning as it did appellant. *Pickering v. Board of Education*, 391 U.S. 563, 578 n.2 (1968).

Here the "obvious defects" have been raised from the beginning.

Jones and the other plaintiffs were summarily suspended in June 1969, in the absence of a pressing need for suspension (this merely being the time of year when such things were done) without the first trapping of due process. This was a clear violation of *Dixon v. Alabama State Board of Education*, 294 F.2d 150 (5th Cir.), *cert. denied*, 368 U.S.

930 (1961); *Knight v. State Board of Education*, 200 F. Supp. 174 (M.D. Tenn. 1961) (both cited approvingly in *Tinker v. Des Moines School District*, 393 U.S. 503, 508, n.2 (1969)). *Cf. Stricklin v. Regents of University of Wisconsin*, 273 F. Supp. 416, 420-423 (W.D. Wis. 1966), *appeal pending* No. 17,597 (7th Cir. argued Oct. 10, 1969) (approving as constitutional doctrine *Dixon Statement*, VI.C.).

control of going immediately into federal court, Jones and his co-plaintiffs tried to correct the error within the University. An entire term of school had passed before these efforts brought about the September hearings.

But when the students presented themselves at the hearings they found an essentially inquisitorial tribunal arrayed against them.

Even at the hearing the inquiry was premised on the *fait accompli* of suspension, the question being whether the students should be readmitted (i.e., not whether they should be suspended). Of course terminology is not determinative, but here it is significant because it accurately describes the situation. The onus of going forward with the evidence was on Jones and he was saddled with the burden of affirmatively proving his suitability as a student. The University understood the burden of proving that its

---

[1] *Status of Student Pending Final Action*

Pending action on the charges the status of a student should not be altered, or his right to be present on the campus and to attend classes suspended, except for reasons relating to his physical or emotional safety and well-being or for reasons relating to the safety and well-being of students, faculty, or university property.

[2] The disciplinary dismissal had been noted on Jones' academic transcript on June 5th and remains a part of his academic record. (A. 178)

had violated valid standards of conduct. See *Lamberty v. Warden*, 380 F.2d 285, 551-52 (1965) (constitutional invalidity of hearing not cured by subsequent hearing in which, because of the earlier invalid determination, burden of proof is reversed); *In re Gault*, 387 U.S. 1, 32-33 (1967) (effective notice prior to first hearing not cured by second hearing); *Hulett v. Julian*, 250 F. Supp. 208 (M.D. Ala. 1966) (three-judge court) (defective trial scheme not cured by availability of de novo trial on appeal).

These inquisitorial methods, foreign to our system of justice, naturally partake of bias. The following words, although delivered in a different context (pertaining to coerced confessions), illustrate the pitfalls of departing from our fundamental jurisprudence:

> "There is the accusatorial as opposed to the inquisitorial system. Such has been the characteristic of Anglo-American criminal justice since it freed itself from practices borrowed by the Star Chamber from the Continent whereby an accused was interrogated in secret for hours on end. . . . Under our system society carries the burden of proving its charge against the accused not out of his own mouth. . . . For while under [the inquisitorial] system the accused is subjected to judicial interrogation, he is protected by the disinterestedness of the judge, in the presence of counsel. . . .
>
> "In holding that the Due Process Clause bars judicial proceedings which violate the basic notions of our accusatorial mode of prosecuting crime and vitiates a conviction based on the fruits of such proceedings, we apply the Due Process Clause to its historic function . . . assuring appropriate procedure before liberty is cut

. . . [illegible] . . . [illegible] . . . [illegible] .

men are loyal to the obligation with which they are entrusted. *Id.*

But the "professional habits" of school administrators quite properly do not fit this description. The "obligation" to which they are "loyal" calls into play considerations which are quite different from, indeed usually the opposite of, the distancing process by which judges maintain their impartiality. For them it is even more

> true that reason cannot control the subconscious influence of feelings of which it is unaware. When there is ground for believing that such unconscious feelings may operate in the ultimate judgment, or may not unfairly lead others to believe they are operating, judges recuse themselves. . . . The guiding consideration is that the administration of justice should reasonably appear to be disinterested as well as be so in fact. *Id.* at 466, 467.[*]

The difference is that the President's feelings were far from "unconscious." And the P.A.C. members' feelings, particularly those of its acting chairman, about the necessity of respecting the President were quite "conscious."

In *Wasson v. Trowbridge*, 382 F.2d 807, 813 (2d Cir. 1967), these ideas were taken to be self-evident:

> In substance Wasson charges that members of the panel had participated in the investigation against

[*] These principles have been codified. See, e.g., 28 U.S.C. § 455 ("any justice or judge . . . shall disqualify himself in any case in which he . . . has been a material witness . . . ."); Fed. R. Crim. P. 42(a)(3) ("If the contempt charged involves disrespect to or criticism of a judge he shall disqualify himself . . . .").

him. This combination of the functions of policeman and judge, he argues, resulted in a biased panel and, thus, the hearing was not fair. It is too clear to require argument or citation that a fair hearing presupposes an impartial trier of fact and that prior *official involvement* in a case renders impartiality most difficult to maintain. . . . Wasson was entitled to show that members of the panel had had prior contact with his case that they could be *presumed*[11] to have been biased. (Emphasis added.)

A showing of actual prejudice is not customarily required where notions of fundamental fairness have been transgressed. See, *e.g.*, *Commonwealth Coatings Corp.* v. *Continental Casualty Co.*, 393 U. S. 145 (1968); *Chandler* v. *Fretag*, 348 U. S. 3 (1954); *Tumey* v. *Ohio*, 273 U. S. 45, 535 (1927) (unnecessary to discuss the facts of the case [11]), and cases cited nn. 108-109 *supra*.

[11] Citation is however available. See *e.g.*, *Commonwealth Coatings Corp.* v. *Continental Casualty Co.*, 393 U. S. 145, 147-49 (1968) (any tribunal must avoid even the appearance of bias); *id.* at 150, this "constitutional principle," *id.* at 148, applicable to non-court (arbitration) proceedings; *Wong Yang Sung* v. *McGrath*, 339 U. S. 33 (1950); *In re Murchison*, 349 U. S. 133, 136 (1955) (citing the possible temptation to the average man of *Tumey* v. *Ohio*, 273 U. S. 510, 532 (1927)). The F.A.A.'s pre-hearing activities were akin to those of a grand jury. "It would be very strange if our system of law permitted a judge to act as a grand jury and then try the very persons accused as a result of his investigations." 349 U. S. at 137.

[12] This presumption is consistent with the holdings of other courts of appeals. See *e.g.* *American Cyanamid Co.* v. *FTC*, 363 F. 2d 757 (6th Cir. 1966); *Amos Treat & Co.* v. *SEC*, 306 F. 2d 260 (D.C. Cir. 1962). In these cases, it was not necessary to establish actual prejudice; the commingling of functions was sufficient to taint the hearing.

Commentary on the district court's opinion on this point, too, has been critical. Professor Charles Alan Wright quotes from the district court opinion and comments as follows:

> "[L]imited combination by a school administrative body of prosecutorial and adjudicatory functions is not fundamentally unfair in the absence of the showing of other circumstances, such as malice and personal interest in the outcome of the case." [279 F. Supp. at 200] I agree that this procedure may not be fundamentally unfair but I wonder if it does not fail by the other test of reasonableness? When other alternatives are so easy, it seems quite unreasonable for the judge also to be a witness . . . . Wright, *The Constitution on the Campus*, 22 Vand. L. Rev. 1027, 1080-81 (1969).

The testimony was generally that the F.A.C. stuck to the record of the hearings.[10] But the members were only human and they had been intimately and officially involved. The acting chairman, testifying in the district court, at one point acceded to this humanity and conceded that, "[i]n deliberation" and "[p]erhaps in discussion" the F.A.C. took evidence. (A. 122)

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[9] The court was here referring to the fact that two members of the F.A.C. testified against the plaintiffs. 279 F. Supp. at 200. This is technically correct only as to the other two plaintiffs although it is submitted that the court was approaching the problem correctly in considering issues of composition of the panel as being the same for all three plaintiffs. The appropriate question is the manner in which justice is being meted out at the University.

[10] Professor Wright's criticism would no doubt have been stronger had the President's involvement been alluded to in the opinion.

[11] *Cf. SEC v. Chenery Corp.*, 332 U.S. 194 (1947).

The President's involvement is reminiscent of the problem of "command influence" in courts martial. See *Reid v. Covert*, 354 U.S. 1, 36 (1957). Because of various exigencies which do not (or should not) exist in academia, the military has been allowed to use courts martial not as "an independent instrument of justice" but as "a specialized part of the overall mechanism by which military discipline is preserved." *O'Callahan v. Parker*, 395 U.S. 258, 265 (1969). The pervasive built in influence of the commander over the members of the tribunal is an unsolved problem. *Id.* at 264. The principal draftsman of the Uniform Code of Military Justice recognized that the Code was inadequate in this respect. See Morgan, *The Background of the Uniform Code of Military Justice*, 6 Vand. L. Rev. 169, 179, 183-84 (1953).[a]

Nevertheless, a troop commander would not be allowed to maintain the degree of involvement with the proceedings that the President has been allowed here.[b] See generally *United States v. Hedges*, 11 U.S.C.M.A. 642, 29 C.M.R. 458 (1960); *United States v. Littrice*, 3 U.S.C.M.A. 467, 13 C.M.R. 43 (1953).

See also the "impartial" pre-trial investigation required by UCMJ art. 32(a), 10 U.S.C. § 832(a), conducted by an

[a] Some adjustments have recently been made by the Military Justice Act of 1968, 82 Stat. 1335 (codified in scattered sections of the UCMJ, 10 U.S.C. §§ 801-940).

[b] The convening authority of a court martial, normally the commanding officer, also exercises intermediate post-trial review. UCMJ arts. 60(c), 10 U.S.C. § 860(c). But he is prohibited by UCMJ art. 22(b), 10 U.S.C. § 822(b) from being an "accuser," defined as the one who brings charges or "any other person who has an interest other than an official interest in the prosecution of the accused." UCMJ art. 1(9), 10 U.S.C. § 801(9).

officer who thereafter does not participate. See arts. 6(c), 26(d), 10 U.S.C. §§ 806(c), 826(d).

If methods which are beyond the pale even to the military are allowed in our universities, it is redundant to speak of the possibility "that expansion of military discipline beyond its proper domain carries with it a threat to liberty." *O'Callahan v. Parker*, *supra*, 395 U.S. at 265.

C. The Discretionary Proceedings Were Arbitrary, Depriving Plaintiffs Cause in That Notice Was Deficient as to Time and Information.

1. *Time of Notice*

All three of the plaintiffs' cases were treated as a single group. Two days to prepare for the first of three consecutive hearings on seventeen separate charges is absurd, considering that the action had been initiated some three months earlier.[9]

Regardless of whether application of due process principles results in a rigid standard (*e.g.*, 10 days' notice absent unusual circumstances) or a flexible case-by-case requirement of reasonableness, two days measured against the delay of three months is insufficient.[10] Of course if the University had not insisted on making the interim suspension

[9] The university has persistently claimed that the delay was caused by the offer of a continuance. The offer, though, did not include restoration of the pre-suspension status quo and had Jones accepted it he would not have been able to register at the beginning of the fall term. He had already missed the summer session because of the suspension; this seemed enough.

[10] A fairly rigid standard would seem preferable as less subject to abuse and less productive of litigation.

(which was also unconstitutional) the problem would not have arisen.

The additional evidence and proffers of evidence in the district court supply a showing of prejudice if such is needed.

In holding that the notice was timely, the district court relied on *Doe v. Florida A. & M. University*, 233 F. Supp. 396 (N.D. Fla. 1963). Although *Doe* does not appear to have been correctly decided (there was no advance notice of charges), such reliance is in any event misplaced because, unlike the intricate network of diverse and disputed accusations here, there were no factual disputes in *Doe*.

2. *Notice of Evidence*

If, as has been the practice and may be desirable, schools are not to be bound by detailed prosecutorial codes, "trial by surprise" has no place in disciplinary proceedings. In particular, copies of documentary evidence that served as the basis for the charges should be given the student. The authority upon which the action is founded (here certain regulations from the *Handbook*) should be pointed out to the student. And it is reasonable to let the student know, at least when the University knows, the testimonial evidence he is to face.

Some of this information was disclosed in advance. Some measure has yet not fully determined, of discovery is constitutionally required in other areas. See, e.g., *Giles v. Maryland*, 386 U.S. 66 (1967); *Jencks v. United States*, 353 U.S. 657 (1957). A reasonable approach to delineating the scope of the right is to consider the nature of the proceed-

ing. As the formality of the hearing decreases, the appropriateness of pre-hearing exchange of information increases.

As an alternative to considering the question in the context of discovery, it may be considered as an aspect of the requirement of specificity of charges. Either way the test should be to look at the quantum of information that has been made available to the student sufficiently in advance to allow him to prepare his defenses.

Both before the F.A.C. and in the district court a question came up that has no place in a system where reasonableness is supposed to prevail (A. 50-51, 101-02). Jones had either assumed or could reasonably have assumed that he was being disciplined for handing out Pl. Exh. 5 (A. 105) that the University insisted it was for (Pl. Exh. 6 (A. 175)). Instead of forestalling the problem by showing him the leaflet in advance, or simply attaching a copy to the charges, University counsel toyed with inconclusive results to show that Jones was not surprised that Pl. Exh. 6 was the subject of the charge.

Conclusion

The decision of the court of appeals (which reached on the district court's opinion) should be reversed and the case remanded to the district court for entry of an appropriate order (enforcing the status as it existed prior to the June 8, 1967 dismissal, enjoining further disciplinary proceedings against petitioner, and requiring expungement of all record of the dismissal. All issues raised herein and ignored in the district court's opinion should be decided

ADDENDUM

Powers, Duties, Authorities and Functions of Tennessee State Board of Education and Commissioner of Education as Provided in Title 49 of Tennessee Code Annotated

	Section of Tenn. Code Ann. Title 49
State Board of Education functions	
Administer the state's system of education (along with Commissioner and local superintendents and boards) including special schools such as kindergartens, those for exceptional and handicapped children, those for the blind and deaf, a fire college, and six colleges and universities	102 2303 2902 3005 3026 3104 3213 3218
Elect certain Supervisors in department of education	105(1)
Adopt regulations, including those for approval and classification of public schools, for teaching and other certificates (even prescribing standards different from those prescribed by statute), for instruction for the retarded, *for government of* and admission to *six colleges and universities,* prescribe curricula and approve courses including "adequate provision for the growth of . . . pupils in the skills basic to citizenship in American democracy"	105(5) 108 1234 1236 1237 1907 1908 1909 2907 2908 3213 3221 3224
Administer federal funds including urban renewal adjacent to colleges, enter into contracts with respect thereto with federal and local gov-	109 2701 2702

	Section of Tenn. Code Ann. Title 49
ernmental units, and authorize disbursement thereof	3223 3226 3227 3503
Act as board of vocational education	107 2701
Authorize leasing of public lands to fraternities and sororities	113
Establish tax-sheltered annuities	114
Issue certificates to teach and collect fees therefor	1232 1235 1238
Appoint advisory counsel to make continuing study of problems of teacher education and certification	1240
Approve or adopt "[a] treatise on the history and interpretation of the Constitution of the United States"	1907
Prepare detailed plans for vocational education	2703
Do whatever it deems necessary in the area of special education to establish and maintain classes, establish standards, curriculum and instructional methods, acquire facilities, equipment, and special personnel, and to assist local and other state agencies	2902
Establish scholarships for the professional education of Negroes at other (out of state) schools in subjects offered for white students by the University of Tennessee	3207 3208
Establish training and instruction for Negroes equivalent to that offered to whites by the University of Tennessee	3209

	Section of Tenn. Code Ann. Title 49
Prescribe nonresident tuition rates at state colleges	3211
Establish college ROTC	3214
Establish retirement plans for or pay retirement annuities to college employees	3216
Authorize municipalities to prescribe and enforce traffic ordinances on college campuses and to revoke such authorizations	3225
Establish standards for and confer university status upon institutions of higher learning	3229 3230
Establish foundations for colleges and universities	3232
Acquire (including acquisition by exercise of right to eminent domain), hold, and contract with respect to real and personal property	3503
Borrow money and issue bonds	3503(e) 3504 3505
Establish an educational television network	3801-07
Commissioner of Education functions	
Administer the state's system of education (along with State Board and local superintendents and boards), and see that school laws and regulations are executed	102 105(5)
Administer school laws	104
Chairman of State Board of Education, and Secretary of State Textbook Commission, Executive Officer of Board for Vocational Education, Member of Board of Trustees of University of Tennessee	105 2003 2702 3301

	Section of Tenn. Code Ann. Title 49
Appoint all personnel in the department of education except those elected by the State Board, and Supervise and direct all such personnel the department being comprised of four major divisions: certification, public libraries & archives, vocational rehabilitation, and vocational education	105(1) 110 111
Collect and publish school statistics and information	105(2)
Inspect and direct the supervision of public schools and supervise high schools	105(3) 105(16)
Require teachers to attend institutes	105(4)
Prescribe detailed annual reports from local school systems and from heads of state educational institutions, and provide forms for these and all other reports	105(6) 105(8) 105(9)
Print and distribute school laws	105(7)
Preserve official documents and other matters on education	107(10)
Make annual reports, including detailed report of all official acts, and average daily attendance	105(11) 105(12)
Prepare and furnish high school diplomas	105(13)
Receive evidence, provide opportunity for defense, and rule on revocation of certificate of teachers, principals, supervisors and other school officials	105(4)
Protect school funds and initiate investigations and recovery proceedings (including employment of private counsel) for school funds, and require bonds for handling thereof	105(15) 105(18)
Regulate display of flags	105(17)
Inspect, approve, and classify private schools	105(19)

	Section of Tenn. Code Ann. Title 49
Represent state in administration of federal school legislation	109
Issue temporary teaching permits	1234
Prescribe regulations and procedures for night schools and for the establishment and maintenance by local boards of programs for retarded children	2504 2909
Distribute funds for multiple handicapped children	3019
Establish training and instruction for Negroes equivalent to that offered to whites by the University of Tennessee	3209
Disbuse funds to colleges and universities in accordance with monthly statements therefrom	3215
Assist Board in establishing an educational television network	3801-07

Also the Board and Commissioner are charged with further duties in administering the annual appropriations and general education acts. This latter act for 1969 is 58 pages long. 1969 Pub. Acts of Tenn., ch. 294 (May 20, 1969). The educational appropriation of state funds (exclusive of that for the separately administered University of Tennessee) is over three hundred million dollars, including forty-four million dollars for higher education, of which $4,198,000 is allocated to Tennessee A. & I. State University. *Id.* and ch. 256.

SUPREME COURT, U. S.

FILED

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JOHN F. DAVIS, C

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

No. 731

KENNETH R. JONES,
Petitioner,

vs.

THE STATE BOARD OF EDUCATION OF AND FOR THE STATE OF TENNESSEE, et al.,
Respondents.

RESPONDENTS' BRIEF

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RESPONDENTS' BRIEF

OPINIONS BELOW

The opinions of the lower Court are reproduced verbatim in the joint Appendix filed in this case. The opinion of the District Court is found at pages 183 through 206 (also

reported in 279 F. Supp. 190), and the Court of Appeals opinion at pages 208 through 210 (also reported in 407 F. 2d 834).

JURISDICTION

Jurisdiction Is Admitted.

COUNTER-QUESTIONS

I

Whether the University Acted Arbitrarily and Capriciously in Suspending the Petitioner, or Whether It Acted With Procedural Fairness and Suspended the Petitioner for Acts of Misconduct That Were Calculated to Promote Unrest on the Campus, Bring About Disorder, Challenge Legitimate University Authority or Engage in Conduct Prohibited All Students.

II

Whether Petitioner Was Given Due Process as to: (a) Time for Adequate Preparation for His Hearing, and (b) Notice of Charges Against Him: and Whether or Not the Two Members of the Committee Who Gave Testimony Against Him Were Biased.[1]

---

[1] Certiorari was granted only to this petitioner and disallowed as to the other two original petitioners. Respondents therefore, feel these last two questions have been pretermitted since they would have applied equally to the other two original petitioners.

COUNTER-STATEMENT OF THE CASE

Petitioner, Kenneth R. Jones, an Ohio resident, was "suspended" from the Tennessee State University at Nashville, Tennessee, for promoting unrest on the campus on different occasions by such actions as distributing literature for that purpose; for not being truthful when he appeared before the Discipline Committee in regard thereto; for violating the rules of conduct governing students at such University; and for failing to meet the minimum standards of propriety in conduct required at such University.

Members of the faculty, particularly Dr. J. A. Payne, Dean of Students, had talked with Jones throughout the school year. He had worked with him in an attempt to persuade him not to continue to deviate from the standards of conduct prescribed by the University (A. pp. 116-117). At the end of the school year, pursuant to long established practice, the Faculty Advisory Committee met and discussed the students that had, during that school year, been suggested for disciplinary action. Jones was among some seventy students that were, as a result of such conference, notified by letter that they were being considered for disciplinary action (A. p. 113). They were advised to appear and show cause for the conduct complained of in the letter. Prior to sending the letter, however, a telegram was sent to such students, advising them that they had not been cleared to enter the University for summer study and that a letter would follow.

Following notice from petitioner (and several other students[2]) the University arranged for a hearing, detailed

[2] Hearings were originally scheduled for five students. Charges were dismissed as to one, another was found to have graduated and had not applied for admission to graduate school. The three original petitioners, including the one before this Court, were indefinitely suspended.

the charges against him; permitted him to appear before the Committee with counsel and witnesses; to be a witness for himself; and to speak until he had nothing further to say.[3]

Following the suspension, this petitioner (and two others) brought suit in the United States District Court for Tennessee (MD), and following three days of hearing proof, the presiding judge of that Court, Judge William E. Miller, on January 18, 1968, entered an opinion in which, after thoroughly discussing all of the complaints, he dismissed the case ". . . on the merits" (A. p. 206). On appeal to the United States Circuit Court of Appeals, Sixth Circuit, that Court reviewed the proof and affirmed the District Court. In so doing, the Appellate Court said, in part:

> "We take special note of plaintiff's argument that they were expelled for activities which are protected by the First Amendment. This argument is clearly refuted by the record which is replete with substantial evidence to support plaintiffs' expulsion for conduct other than the type of activity which is entitled to constitutional protection."[4]

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[3] **Due v. Florida A & M University**, 233 F. Supp. 396 (1963).

[4] Reference is made to this specific finding because it is believed that this is perhaps the question that was of most concern to this Court when it granted certiorari in this case.

THE F. A. C. CHARGES, FINDINGS AND THE EVIDENCE

The specific charges made by the Faculty Advisory Committee against this petitioner was as follows:

> "You are charged with conduct unbefitting a University student in that during the school year you created a disturbance in the cafeteria located within Jane E. Elliott Hall. During that time a 'worm' which obviously had not been processed through the kitchen was said to have been found in some food served to one of your fellow students. Your actions on that occasion exemplify a disrespect for University authority.
>
> You are charged with distributing literature and soliciting students, all of which was designed to boycott the registration at the University for the Fall Quarter 1967. This occurred during the Summer of 1967.
>
> You are charged with having been recently arrested by the Nashville Metropolitan Police Department at Fortieth Avenue and Clifton Road upon a charge of disorderly conduct. Pursuant to that arrest, you were convicted and fined $50.00 by the Judge of the Metropolitan City Court."
>
> You are charged with continuous disrespect for University authority, all of which is a violation of Chapter 4, Student Handbook, 'Discipline and Honor', pages 17 and 18, and Chapter 3, 'Conduct', page 11."

During the hearing, the president of the University positively identified a leaflet signed by "SNCC", which advocated boycott of school registration as being one of the pieces of literature Jones distributed on the campus. He gave the president one copy personally and the president said he had about fifty copies at that time. A cafe-

teria worker at the University also positively identified this particular leaflet as being one she saw Jones passing out in the school cafeteria. Jones brazeningly denied this and it was a finding of the committee that he was not truthful in so doing. As a result, the F. A. C. Findings were:

> "We, the Committee, find that Mr. Jones has seized upon the opportunity on different occasions to promote unrest on the campus by such actions as distributing literature designed for that purpose. At the hearing he demonstrated his indifference to the truth by denying that he passed out such literature despite positive statements by cafeteria personnel and the President of the University that he had done so. We have no doubt that this student did not tell the truth when he appeared before us in this regard.
>
> After considering all of the matters before this Committee, we feel that Mr. Kenneth Jones has violated the rules of conduct governing students at this University to such an extent that he should be suspended for an indefinite period. We have found from the evidence presented that the actions of Mr. Jones did constitute violations of the University's regulations governing student conduct and behavior. Mr. Jones has not demonstrated his willingness to observe the minimum standards of propriety in conduct required here."

(A. pp. 30-31)

EVIDENCE

Mr. Jones admitted passing out certain other pieces of literature during this period, but he denied passing out the "boycott" literature. However, the F. A. C. found that he lied about this, and the District Court found the evidence sustained the F. A. C. findings of fact. There

was evidence that a considerable amount of leaflets were distributed during this period, and some were introduced as exhibits in the District Court. This was all done during a period of unrest on the campus.[5]

In addition to the factual finding concerning the "boycott" literature, it was admitted by Jones that he had been convicted of two charges and fined $50.00 in the Metropolitan Nashville City Court, of disorderly conduct.

Chapter 4 of the Student Handbook (A. p. 177) specifies certain things, or offenses, that require "Severe Discipline" (pp. 17-18, Handbook). One of these is: "Any act in violation of city, county, state or federal law." Another is: "Disrespect for University authority (ibid)."

Additionally, Dr. Payne testified that he had, during the school year, tried to dissuade Jones from continuing to defy standards of conduct prescribed by the University (A. pp. 116-117). As a result of all of these the F. A. C. found that:

> ". . . the actions of Mr. Jones did constitute violations of the University's regulations governing student conduct and behavior. Mr. Jones has not demonstrated his willingness to observe the minimum standards of propriety in conduct required here."
>
> (A. p. 31)

The District Court found facts, after hearing testimony for three days, to support the F. A. C. findings, and dismissed the complaint ". . . on the merits" (A. p. 206). The Sixth Circuit Court of Appeals found that the acts committed by "petitioner", as shown in the record, went

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[5] Shortly thereafter, the same summer, Stokley Carmichael appeared on the campus, and a riot ensued, which lasted several days.

beyond that protected by the First Amendment, and further that:

> "This argument is clearly refuted by the record which is replete with substantial evidence to support plaintiffs' expulsion for conduct other than the type of activity which is entitled to constitutional protection."
>
> (A. p. 210)

ARGUMENT

Respondents, having combined Petitioner's four questions into two counter-questions, would say:

Counter-Question I

(Questions 1 and 2 for Petitioner)

Basically, questions 1 and 2 raise the issue as to whether or not the findings of the F. A. C. are supported by substantial evidence, and whether or not this school disciplinary body acted arbitrarily and capriciously. Further, that even if the proof was substantial, and the F. A. C. acted with procedural fairness, whether the acts found to have been committed by petitioner were solely acts protected by the Constitution. The first question, stated by petitioner, charges the language which prescribes regulations for student conduct in the Student Handbook, with being vague and overbroad. Respondents would reply, first, to this, that this appeal is from the trial held in the U. S. District Court, at which time each petitioner admitted he knew the acts on which the disciplinary action was taken. The petitioner also, clearly, from the transcript of the F. A. C. hearings, was familiar with each charge against him and each act found to have been committed by him.

"Disrespect for University authority", and "Any act in violation of city, county, state or federal law," should not be so vague and overbroad as to confuse a college student. These specific acts, plus the act of distributing literature and soliciting students, all of which was designed to boycott the registration at the University for the Fall quarter, 1967, constituted the charges against the petitioner, which were the basis of the factual hearing and resultant findings. Judge Miller in his opinion (A. p. 195), said, concerning the vague and overbroad complaint:

> "The specifications of charges of September 14th were precise statements of the accusations against plaintiffs. They were actually more detailed than many indictments presented in courts of law."

Both at the F. A. C. hearings, and the District Court trial, it was obvious, from the record, that the petitioner was fully aware of all charges against him.

The United States District Court, in Florida, in **Due v. Florida A. & M. University**, 233 F. Supp. 396 (1963), held that where students were telephoned and asked to come to the campus and contact the Chairman of the Disciplinary Committee (comparable to A&I's F. A. C.) and were for the first time read the text of a letter which they had denied receiving, which charged them with having been convicted for contempt of court in the Circuit Court of Leon County, Florida, in violation of the rules and regulations of a student handbook, and were permitted to respond to the charge until they had no more to say, had not been denied due process. In that case, the hearing was informally held in the faculty lounge, one of the students was given about forty-five minutes and the other fifteen or twenty minutes to answer to this charge. They did not have counsel present, and they were not permitted to hear any testimony against them except the reading of the letter referred to. They were suspended indefinitely for violating the regulations of the student handbook. The United States District Court upheld the decision of the school officials in suspending the students and held the notice and hearing sufficient.

Further authority for University authority to suspend or otherwise discipline students, is found in the recent California case, **Goldberg v. Regents of University of California**, 248 A. C. A. 1015, 57 Ca. Rptr. 463 (1967). In this case, the students were expelled after being arrested for violating obscenity statutes and before a con-

viction thereon. The Court held that holding the hearings and subsequently dismissing the students before conviction in the courts did not deny them due process, since they were in violation of the rules and regulations of the University as set forth in the General Catalogue of the Berkeley Campus. This is equivalent to the Student Handbook at Tennessee A. & I. State University.

In a State supported university, where the student, through tuition-type fees, pays approximately ten percent of the cost, and the balance is borne by taxpayers generally,[6] how far is he authorized to go in his conduct to the detriment of school administration and the rights of other students seeking an education at such university? Does his constitutional umbrella have no leaks while he pushes others from its protection into inclement weather?

The Supreme Court of California, in the **Goldberg** case, supra, had this to say on the subject:

> "We hold that in this case, the University's disciplinary action was a proper exercise of its inherent general powers to maintain order on the campus, and to exclude therefrom those who are detrimental to its well being (**Morris v. Nowotny**, Tex. Civ. App. (1959), 323 S. W. 2d 301, cert. denied 361 U. S. 889, 80 S. Ct. 164, 4 L. Ed. 2d 124). Thus, for the purposes of this appeal, it is not necessary to discuss plaintiffs' contention that any particular regulation was unconstitutionally vague."

In the case of **Meehan v. Macy, et al.**, the United States Court of Appeals, District of Columbia,[7] in up-

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[6] This petitioner was not even a citizen of the State of Tennessee, but chose this university, and knew of the attendant restrictions.

[7] 392 F. 2d 822.

holding the dismissal of an employee under Civil Service for violating rules of employment, cited the oft-quoted ruling of Justice Holmes of Massachusetts:

> "The petitioner may have a constitutional right to talk politics, but he has no constitutional right to be a policeman."[8]

Certainly a student in enrolling in a state supported university does so with an obligation to abide by reasonable restrictions imposed alike upon all students for the orderly administration of the University.

It has, in effect, been argued that since petitioner's appeal to the student body for a boycott of registration did not produce the results he sought, that it was harmless. Are the school administrators required to wait until the horse is out to close the barn door? Had he not been suspended that summer, who knows what activity petitioner would have engaged in, or the results, before the Fall quarter began. We do know that shortly after this rash of literature was passed out on the campus, that Stokley Carmichael appeared and a campus riot resulted.

In the **Meehan** case, supra, the Appeals Court said:

> "With mounting provision of increased and increasingly indispensable services rendered by Government employees, the public weal demands administration that is effective and disciplined, and **not beset by turmoil and anarchy.**" (Emphasis supplied.)

All over this nation today a small percent of students on our college campuses are completely disrupting the learning processes not only for themselves but for the vast majority who are there for an education, and often at great sacrifice to themselves and others.

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[8] **McAuliffe v. City of New Bedford**, 155 Mass. 216, 220.

In a recent decision[9] (Nov. 28, 1969) the United States Court of Appeals, Sixth Circuit, in another Tennessee case wherein students were suspended from a state university for handing out leaflets, upheld the action by the school authorities and in doing so, said:

> "It is not required that the college authorities delay action against the inciters until after the riot has started and buildings have been taken over and damaged. The college authorities had the right to nip such action in the bud, and prevent it in its inception. This is authorized even in criminal cases.
>
> As well stated by Chief Justice Vinson, in Dennis v. United States, 341 U. S. 494, at page 509 (1951):
>
> > 'Obviously, the words cannot mean that before the Government may act, it must wait until the "putsch" is about to be executed, the plans have been laid and the signal is awaited. If Government is aware that a group aiming at its overthrow is attempting to indoctrinate its members and to commit them to a course whereby they will strike when the leaders feel the circumstances permit, action by the Government is required.'
>
> "In **Schenck v. United States**, 249 U. S. 47, at 52 (1919), Mr. Justice Holmes said:
>
> > 'We admit that in many places and in ordinary times the defendants in saying all that was said in the circular would have been within their constitutional rights. But the character of every act depends upon the circumstances in which it is done. **Aikens v. Wisconsin**, 195 U. S. 194, 205, 206. The most stringent protection of free speech would not protect a man in falsely shout-

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[9] **Norton, et al. v. The Discipline Committee of East Tennessee State University.**

> ing fire in a theatre and causing a panic. It does not even protect a man from an injunction against uttering words that may have all the effect of force. **Gompers v. Bucks Stove and Range Co.**, 221 U. S. 418, 439. The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree.' "

In the case of **Tinker v. Des Moines Independent Community School District**, 393 U. S. 503, Mr. Justice Fortas, speaking for the Court in the majority opinion, was careful to mention:

> "As we have discussed, the record does not demonstrate any facts which might reasonably have led school authorities to forecast substantial disruption of or material interference with school activities, and no disturbances or disorders on the school premises in fact occurred." Id. at 514.

In the present case, the Faculty Advisory Committee, with the concurrence of the President of the University, did forecast disturbances as a result of the threat of this boycott of registration, and they moved quickly to prevent it.

The case sub judice is similar to the **Norton** case, supra, also in regard to the action taken by the Committee. In both cases, the students were "suspended" and not "expelled." The Court, in commenting on this in **Norton**, said:

> "Finally, it should be emphasized that appellants were not expelled from the University, but were merely suspended. The difference between expulsion

and suspension was explained by Dr. Davis as follows:

> 'I continue to hear reference to the matter of expel or expulsion. We at no time even mentioned the word expel or expulsion.
> 'The plan of suspension is a restraint from enrollment which gives those of us who are concerned with administration of affairs time to reflect and to study what has happened. It also gives the student time to reflect and to study, and to appear before the committee then so that the committee and the student can, if possible, come to an agreement about future attendance.
> 'There is a difference in the meaning of suspension and expulsion' (159a).

"The District Judge, at the close of the hearing, suggested that the University give hearings on applications for reinstatements. The record does not reveal that any such applications were made. The students were apparently insistent that they had the right to do what they did and they are going to stand by it.
"In our judgment there is no basis for federal interference with the disciplinary procedures of the State University in this case.
"We agree with the District Court that the charges that the literature was false and inflammatory, was sufficiently definite."

Counter-Question II

(Questions 3 and 4 for Petitioner)

This question raises the issue of due process, as outlined under the stated question of this brief.

Respondents would point out that this petitioner was not treated differently from the other two original pe-

titioners in this regard, and since this Honorable Court rejected their petition for certiorari, we feel the Court has, to a degree at least, pretermitted this issue. However, Respondents would make this brief reply:

In the case at bar, the petitioner, together with the other two original petitioners, were given a formal hearing following at least three notices, charges in writing were given them, they were permitted to have an attorney present, testimony was introduced in their presence, they were given an opportunity to testify and ask questions of their accusers. Further, they were allowed to speak "until they had nothing further to say." The weight of authority is to the effect that no formal hearing is required; that is, that the hearing need not be conducted with all the formality of a trial in court, even where a statute requires a hearing. 58 A. L. R. 2d 906-907, citing: **Koblitz v. Western Reserve University**, 21 Ohio C. C. 144; **State ex rel. Sherman v. Hyman**, 180 Tenn. 99, 171 S. W. 2d 822, **cert. denied**, 319 U. S. 748; and others. The holdings are also clear that no particular form of procedure is required to constitute due process in administrative hearings. **Louisville Gas and Electric Co. v. F. P. C.**, 129 F. 2d 126 (6th Cir. 1942), **cert. denied**, 318 U. S. 761, 63 S. Ct. 559, 87 L. Ed. 1133, and **N. L. R. B. v. Prettyman**, 117 F. 2d 786 (6th Cir., 1941). It is equally clear that the stage of the proceedings wherein the hearing is held is not important. **Opp Cotton Mills v. Administrator of Wage and Hour Division of Department of Labor**, 312 U. S. 126, 61 S. Ct. 524, 85 L. Ed. 624.

Case Holdings in School Cases

The petitioner has relied heavily on the case of **Knight v. State Board of Education**, 200 F. Supp. 174 (M. D. Tenn. 1961), and **Dixon v. Alabama State Board of Education**, 294 F. 2d 150 (5th Cir., 1961), **cert. denied**, 368

U. S. 930, wherein it was held that fair notice and an opportunity for hearing were required. However, in neither of these cases were the students given any kind of a hearing before expulsion.

In **Sherman v. Hyman**, supra, certain medical students at the University of Tennessee were afforded hearings before a special board of students and then a faculty committee and a special committee of the board of trustees. At each stage, they were informed of the substance of the testimony against them and permitted to testify and present evidence in rebuttal. Certain guidelines were set out in connection with the procedure followed. The **Knight** case, supra, cited this case as a guideline for such hearings, and effectively upheld such procedure. The petitioner in the case at bar was given everything suggested in **Sherman v. Hyman**, supra, plus communication over a period of time relative to the charges and was allowed counsel. He also met his accusers "face to face" and was permitted to cross-examine them. As indicated earlier, petitioner was given notice over a considerable period of time, he was given specific charges before the hearing, he was granted a formal hearing in a hearing room at the University, he had counsel present, charges were enumerated, were testified to in the presence of petitioner who was privileged to cross-examine and testify for himself under direction of his counsel, and allowed to call witnesses on his behalf.

Petitioner further alleges that he was not given a fair hearing by the F. A. C. as a result of some two of the nine members testifying against him and continuing to sit on the Committee throughout the hearings and rendering of the decisions. To support this contention, petitioner cites the case of **Wasson v. Trowbridge**, 382 F. 2d 807 (2d Cir. 1967). In the **Wasson** case, the plaintiff had been dismissed from the Merchant Marine Academy. One of his contentions was that members of the panel which disci-

plined him had participated in the investigation. This was contrary to the regulations of the Academy. It is not contrary to the regulations at A & I for a member of the F. A. C. to testify. Further, in the **Wasson** case, supra, the United States Second Circuit Court remanded it to the District Court for a hearing, holding that **Wasson** was entitled to show that members of the panel had had such prior contact that they could be presumed to have been biased.

In the case before this Honorable Court, the Lower Court held a full evidentiary hearing and afforded the petitioner every opportunity to show that the members of the F. A. C. were biased against him. No such showing was made and, to the contrary, the record clearly demonstrates that there was no bias or prejudice on the part of the F. A. C. In 2 Davis, **Administrative Law**, Sec. 13.02, at page 237 and 238 (1958), this question is fully discussed, and Respondents' position upheld:

In **Mackler v. Board of Education of City of Camden**, 16 N. J. 362, 108 A. 2d 854 (1954), the Court held that participation in the prosecution of a case did not disqualify board members who later judged the case in the absence of a showing of malice or ill will or any private interest in the outcome of the case. See, also, **Marcello v. Bonds**, 349 U. S. 302, 75 S. Ct. 757, 99 L. Ed. 1107, **Shaughnessy v. United States**, 349 U. S. 280, 75 S. Ct. 847, 99 L. Ed. 1074; **F. T. C. v. Cement Institute**, 33 U. S. 683, 68 S. Ct. 793, 92 L. Ed. 1010 (1948); and **Pangburn v. C. A. B.**, 311 F. 2d 349 (1st Cir. 1962).

Further, Respondents would respectfully refer this Court to the District Judge's findings on this question, as set out on pages 195 and 196 of the joint Appendix.

Finally, this was a question raised in the **Norton** case, supra. The Appeals Court, in that case concluded by saying:

"They were also given a plenary hearing in the District Court with counsel. Their contention of a denial of due process was thereby rendered moot. **Barker v. Hardaway**, 399 F. 2d 638 (4th Cir., 1968)."

CONCLUSION

The decision of the Court of Appeals, affirming the District Court, should be affirmed. The right of school administrators and educators, as well as the rights of other students, should not be trammeled upon as a result of undue zeal in protecting alleged Constitutional rights of an individual student intent on promoting turmoil.

Whether this Court, or any Court, should substitute its judgment on matters of fact and causes of disorder on a college campus, for that of experienced, highly trained school administrators, is the only real question. It is a factual determination as to whether petitioner's conduct was so disruptive, or calculated to be, as to unreasonably interfere with the administration. It is a factual matter as to whether this petitioner violated the Code of Conduct prescribed for all students at the University, as set out in the Student Handbook; and whether he understood what acts were prohibited.

Those best qualified to make these determinations were the Faculty Advisory Committee, composed of well-trained, experienced school administrators, on the scene and exposed to varying degrees of student conduct, and weighing the consequences daily of such acts. The District Court found the action justified. The Court of Appeals affirmed. Respondents respectfully insist that this Court should make a decisive, firm and consistent ruling in support of orderly administration of state supported institutions. By upholding the action of Respondents this will be a result; to hold contrary will result in furthering

disrespect by students of their school administrators and encourage small radical groups of students on our campuses to "educate the educators" through any means at their command, however destructive.

Respectfully submitted

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Certificate of Service

I, Thomas E. Fox, Deputy Attorney General for the State of Tennessee, one of the attorneys for the Respondents herein, and a member of the Bar of the Supreme Court of the United States, do hereby certify that on the ... day of December, 1969, I served copies of the within Brief for the Respondents on the Petitioner, by mailing said copies in duly addressed envelopes, postage paid, to the counsel of record, Honorable Reber F. Boult, Jr., and Honorable Charles Morgan, Jr., Attorneys-at-Law, 5 Forsyth Street, Atlanta, Georgia 30303; Honorable Percy L. Julian, Jr., Attorney-at-Law, 330 East Wilson Street,

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

No. 731

KENNETH R. JONES,

Petitioner,

vs.

THE STATE BOARD OF EDUCATION OF AND FOR THE STATE OF TENNESSEE, *et al.*,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITIONER'S REPLY BRIEF

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PETITIONER'S REPLY BRIEF

At two points in their brief (pp. 7, 12) respondents claim that shortly after Jones handed out the leaflet involved here, Stokely Carmichael came to the campus and caused a riot. They assert no causal connection between Jones' leaflet and these gratuitously alleged events.

Nevertheless for the sake of clarity it should be pointed out that these statements are incorrect. Mr. Carmichael's appearance on the campus and the disturbances in the neighborhood occurred several months prior to Jones' handing out his leaflet.

Mr. Carmichael's appearance in Nashville and the events that took place thereafter were not relevant to this case,

so they were not developed in the record. As was done to refute respondents' erroneous extra-record assertions in Petitioners' Reply Brief on Petition for Writ of Certiorari, reference may be made to *Brooks* v. *Briley*, 274 F. Supp. 538 (M.D. Tenn. 1967), *aff'd mem.*, 391 U.S. 361 (1968) for the correct sequence of events: Mr. Carmichael's appearance in Nashville was April 6-8, 1967. 274 F. Supp. at 543. The disturbances in Nashville's Negro district occurred April 8-10, 1967. 274 F. Supp. at 543-44.

The leaflet was composed on August 18, 1967 (A. 45, 154).

The record is barren of any indication of unrest at or about the time Jones was said to have handed out his leaflet.

II.

In their statement of the evidence at p. 7 of their brief, respondents refer to the school regulation prohibiting violation of any city, county, state, or federal law, implying that Jones was disciplined for violating this regulation. They omit reference, however, to the explicit testimony (A. 120) of the Chairman of the FAC that this was not a ground of dismissal.

III.

At p. 12 of their brief, respondents invoke the hoary dictum of *McAuliffe* v. *City of New Bedford*, 155 Mass. 216, 220, 29 N.E. 517 (1892) to suggest that students, by analogy to Nineteenth Century policemen, "are relegated to a watered down version of constitutional rights," *Garrity* v. *New Jersey*, 385 U.S. 493, 500 (1967). Such continuing vitality that this dictum might have has been largely (and, as far as is relevant here, entirely) repudiated by *Garrity*

and by *Keyishian* v. *Board of Regents*, 385 U.S. 589, 605-06 (1967). See also *Pickering* v. *Board of Education*, 391 U.S. 563, 568 (1968).

Respondents' further analogy to policemen by reliance on *Meehan* v. *Macy*, 392 F.2d 822 (D.C. Cir. 1968) ignores the fact that this opinion appears to be undercut by the subsequent per curiam opinion on rehearing *en banc*, No. 20812 (May 12, 1969).

At any rate, whatever the law is as to policemen, *Tinker* v. *Des Moines School District*, 393 U.S. 503 (1969) firmly establishes students' first amendment rights.

IV.

Respondents devote more than two pages of their brief (pp. 13, 14-15, 19) to quotations from *Norton* v. *Discipline Committee of East Tennessee State University*, No. 19107 (6th Cir. November 28, 1969). Attention is invited to the petition for certiorari filed in *Norton*, docketed December 29, 1969, No. 1011, 1969 Term, for discussion of this opinion and for further illuminating the contexts in which students' first amendment problems arise.

Respectfully submitted,

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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR REHEARING

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

No. 711

KENNETH JONES,

Petitioner,

v.

THE STATE BOARD OF EDUCATION OF AND FOR THE STATE OF TENNESSEE *et al.*,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR REHEARING

Petitioner Jones petitions for rehearing of the order entered February 24, 1970 dismissing the Writ of Certiorari as improvidently granted. Alternatively to plenary reconsideration, petitioner moves that the judgment be vacated and remanded for further findings.

The order dismissing the writ says that "it emerges, as it did not from the Certiorari papers . . . that Jones' indefinite suspension was based in part on a finding that he lied at the hearing . . ." (Slip Opinion at 1-2). The Petition for Certiorari contains the following:

> The [A.C.] also found that Jones "did not tell the truth when he appeared before us in this regard [*Id.*]. While it is extremely doubtful that this finding is correct, it cannot in any event serve as a basis for dismissal as he was never charged with dishonesty. (Petition for Certiorari at 7 n. 11).

> the procedure represents a particular deprivation of due process in the context of this hearing in which the resolution of credibility between the students on the one hand and the president and members of the [AA] on the other was a central factor "

> "In Jones case the conflict was so severe that it resulted in an uncharged finding against him that he had not told the truth" *Ibid* at 120

> Jones' dismissal for an uncharged offense [that] already [has been] noted *supra* p 2 n 11 " *Ibid* at 121

The last quotation is from the argument of the due process issues presented collectively (this uncharged finding having appeared to be the least difficult of these issues to the petition's fourth question [1]

It may be that the implication that counsel had not fully informed the Court of the issues was for the purpose of avoiding the appearance of disapproving *Dixon v Alabama State Board of Education* [294 F 2d 150 (5th Cir) cert *denied* 368 U S 930 (1961)] and its multitudinous progeny However the opinion does not explicitly state that *Dixon* due process rights (particularly the notice and hearing which were not granted here) will continue Hence despite the apparent ease with which the opinion dismissing the writ is construed its effect will inevitably be to cast doubt upon the correctness of almost a decade of active development of students' procedural rights The likelihood of such doubts increases with the realization that the existence of an uncharged ground for dismissal could so easily have been brushed aside under the *Dixon* due process rationale as to the dissent suggests under *In re Ruffalo* [390 U S 544 (1968)]

[1] Whether the disciplinary proceedings were in violation of due process of law in that notice of charges witnesses and evidence was insufficient confrontation of witnesses was denied and the findings were not all based on the evidence (Petition for Certiorari at 5)

This result, extraneous to the primary reason for granting certiorari, can be avoided by the granting of this petition for rehearing, vacating the judgment and remanding to the district court for findings as to the effect of the I.A.C.'s uncharged finding.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

I, Robert L. Boulé, Jr., a member of the bar of this court hereby certify that the foregoing Petition for Rehearing is presented in good faith and is not presented for the purposes of delay.

/s/ Robert L. Boulé, Jr.

JONES *v.* STATE BOARD OF EDUCATION OF TENNESSEE ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 731. Argued January 19-20, 1970.—Decided February 24, 1970.

Writ of certiorari to determine if indefinite suspension from university where petitioner was a student violated his First Amendment rights *held* improvidently granted, since (as developed after the writ was granted) the suspension was partly based on a finding that he lied at the hearing on the charges against him.

407 F. 2d 834, certiorari dismissed.

Reber F. Boult, Jr., argued the cause for petitioner. With him on the briefs were *Charles Morgan, Jr.*, *Richard Bellman*, *Melvin L. Wulf*, and *Eleanor H. Norton*.

Robert H. Roberts, Assistant Attorney General of Tennessee, argued the cause for respondents. With him on the brief were *David M. Pack*, Attorney General, and *Thomas E. Fox*, Deputy Attorney General.

PER CURIAM.

Petitioner Jones was suspended indefinitely as a student at Tennessee A. & I. State University in the summer of 1967. His indefinite suspension was confirmed after a hearing in September of that year, in which charges against him were specified, evidence taken, and findings made. He, along with two other suspended students, brought suit in the United States District Court for the Middle District of Tennessee, seeking to set aside the suspension on First Amendment and due process grounds. After a hearing, the District Court granted judgment on the merits to defendants with an opinion. 279 F. Supp.

190 (1968). On appeal the Court of Appeals for the Sixth Circuit affirmed, 407 F. 2d 834 (1969). We granted certiorari, 396 U. S. 817 (1969), primarily to consider the issues raised by Jones' claim that he had been separated from the university solely because of his distribution of leaflets urging a boycott of fall registration.

After oral argument, and on closer review of the record, it emerges—as it did not from the certiorari papers or the opinions of the District Court and the Court of Appeals—that Jones' indefinite suspension was based in part on a finding that he lied at the hearing on the charges against him. This fact sufficiently clouds the record to render the case an inappropriate vehicle for this Court's first decision on the extent of First Amendment restrictions upon the power of state universities to expel or indefinitely suspend students for the expression of views alleged to be disruptive of the good order of the campus. Accordingly the writ of certiorari is dismissed as improvidently granted.

It is so ordered.

MR. JUSTICE BLACK, for reasons set out in the above opinion and others stated in his dissent in *Tinker v. Des Moines School Dist.*, 393 U. S. 503, 515-520, would affirm the judgment below.

MR. JUSTICE DOUGLAS, with whom MR. JUSTICE BRENNAN concurs, dissenting.

Petitioner, a student at Tennessee A. & I. State University, was dismissed from the school on charges prepared by a Faculty Advisory Committee and heard by it. One of the charges read as follows:

> "You are charged with distributing literature and soliciting students, all of which was designed to

boycott the registration at the University for the Fall Quarter 1967. This occurred during the summer of 1967.

The literature urging a boycott of registration was a pamphlet which is printed in the Appendix to this opinion.

Petitioners, being suspended indefinitely, brought this suit in the District Court for an injunction and other relief. That court denied relief, 250 F. Supp. 190, and the Court of Appeals affirmed, 367 F. 2d 831. The failure to reverse is a serious setback to First Amendment rights in a troubled field.

The leaflet was couched, it is reported, in vile and bad taste. But we recognized in *Terminiello* v. *Chicago*, 337 U. S. 1, that even strongly abusive utterances or publications not merely published and unsavory pronouncements of dignified people—enjoy First Amendment protection. We said in *Terminiello*:

> "[A] function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger. Speech is often provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettling effects as it presses for acceptance of an idea." *Id.* at 4.

Students are certainly entitled to enjoy First Amendment rights. *West Virginia* v. *Barnette*, 319 U. S. 624, 637; *Keyishian* v. *New Hampshire*, 385 U. S. 589, 603. This does not mean that free speech can be used with impunity as an excuse to break up classrooms or destroy the quiet and decorum of study rooms or to bar the constitutional privileges of others to meet together in

matters of common concern. But the campus, where this leaflet was distributed, is a fitting place for the dissemination of a wide spectrum of ideas.

Moreover, it is far too late to suggest that since attendance at a state university is a "privilege," not a "right," there are no constitutional barriers to summary withdrawal of the "privilege." Such labeling does not resolve constitutional questions, as we recently noted in *Shapiro* v. *Thompson*, 394 U. S. 618, 627 n. 6. The doctrine that a government, state or federal, may not grant a benefit or privilege on conditions requiring the recipient to relinquish his constitutional rights is now well established. *E. g., Cafeteria Workers* v. *McElroy*, 367 U. S. 886, 894; *Sherbert* v. *Verner*, 374 U. S. 398, 404; *Speiser* v. *Randall*, 357 U. S. 513, 519–520; *Garrity* v. *New Jersey*, 385 U. S. 493, 499–500; *Kwong Hai Chew* v. *Colding*, 344 U. S. 590, 597–598; *Frost & Frost Trucking Co.* v. *Railroad Comm'n*, 271 U. S. 583, 593–594; see Van Alstyne, The Demise of the Right-Privilege Distinction in Constitutional Law, 81 Harv. L. Rev. 1439, 1445–1454 (1968); Comment, Another Look at Unconstitutional Conditions, 117 U. Pa. L. Rev. 144 (1968). As stated in *Homer* v. *Richmond*, 292 F. 2d 719, 722:

> "One may not have a constitutional right to go to Baghdad, but the Government may not prohibit one from going there unless by means consonant with due process of law."

This does not mean that the whole panoply of the Bill of Rights is applicable to student dismissal proceedings. It does mean, however, that where there are "constitutional restraints upon state and federal governments" in dealing with the persons subject to their supervision, the persons in question have "a constitutional right to notice and a hearing before they can be removed." *Cafeteria Workers* v. *McElroy*, *supra*, at 898.

Judge Rives, speaking for the Court of Appeals for the Fifth Circuit, stated in *Dixon* v. *Alabama State Board*, 294 F. 2d 150, 157: "[No] one can question that the right to remain at the college in which the plaintiffs were students in good standing is an interest of extremely great value." Judge Rives went on to hold that such "privilege" or "right" could not be taken away without notice and hearing. *Id.*, at 158. Thus the dissent of Judge Clark in *Steier* v. *New York State Education Comm'r*, 271 F. 2d 13, 22–23, became the law. See Wright, The Constitution on the Campus, 22 Vand. L. Rev. 1027, 1028–1034 (1969).

When we look at the present proceeding we learn that there was notice and that there were hearings. The charge was circulating the leaflet, which clearly was a First Amendment right. As we said in *Tinker* v. *Des Moines School Dist.*, 393 U. S. 503, 506:

> "First Amendment rights, applied in light of the special characteristics of the school environment, are available to teachers and students. It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate. This has been the unmistakable holding of this Court for almost 50 years."

At the very least the suspension raises a serious constitutional question in the absence of provision for a timely judicial determination of the First Amendment claims. Cf. *Freedman* v. *Maryland*, 380 U. S. 51.

The circulation did not disrupt a classroom or any other university function. It would seem, therefore, that it is immune from punishment, censorship, and any form of retaliatory action.

"Neither the state in general, nor the state university in particular, is free to prohibit any kind of expression

because it does not like what is being said." Wright, *supra*, at 1039.

The suspension of petitioner was based in part on distributing the literature and in part on the committee's conclusion that, when petitioner at the hearing denied that he "passed out such literature," he "did not tell the truth."

But lying to school authorities was no part of the charges leveled against petitioner. If he is to be expelled for lying, he is entitled to notice and opportunity to be heard on that charge. We said in a case involving the disbarment of a lawyer, "The charge must be known before the proceedings commence." *In re Ruffalo*, 390 U. S. 544, 551. In that case one of the grounds of disbarment was petitioner's employment of one Orlando as an investigator. That was not included in any charge made prior to the disbarment hearing. Petitioner was not aware that it would be considered as a disbarment offense until after both he and Orlando testified on all aspects of that phase of the case. We said that disbarment proceedings

> "become a trap when, after they are underway, the charges are amended on the basis of testimony of the accused. He can then be given no opportunity to expunge the earlier statements and start afresh.
>
> "How the charge would have been met had it been originally included in those leveled against petitioner . . . no one knows.
>
> "This absence of fair notice as to the reach of the grievance procedure and the precise nature of the charges deprived petitioner of procedural due process." *Id.*, at 551–552.

Procedural due process in the present case requires that if petitioner is to be deprived of an education at Tennessee A. & I. for lying, he be given notice of that precise charge and an opportunity to be heard.

APPENDIX TO OPINION OF DOUGLAS, J., DISSENTING

"In the early years of the civil rights movement in America, college students in Nashville's black universities were in the forefront of the struggle. Today, a new vanguard has formed and once again, students at Tennessee State University are called to the helm.

"The great white fathers downtown have given the ultimatum to the administrators of this school. They've begun the conspiracy to seize total control of the puppet administrators and the entire student body. For their own security, and in the vested interest of the MAN, the Juda administration has sold out the student body by directing the following atrocities against us:

"1. Students whose names appeared in the Nashville rags—namely the Banner and the Tennessean—in connection with the April 'disturbances' have been dismissed from this university without pre-warning of their dismissal, and without the opportunity to appear before the student senate to hear the charges brought against them, and to appeal their cases.

"COMMENT: If the puppets want to adopt the uncivilized tactics used by the MAN, we must move to correct these erroneously acting, educated TOMS.

"2. Legislation has been taken to decrease the number of out-of-state students by increasing out-of-state fees, and adopting rigid academic standards.

"COMMENT: The puppet fools have taken this action to remove academic freedom, and student dissent from university life. Thus they secure their own shaky jobs, and their positions in the circus of white man's society. These people are too blind to see that the MAN initiated these moves so that he may 'morally' proceed to infiltrate our black

university with his teachers and students who are more adept in perpetuating his culture than the puppets who are already here.

"3. Non-city students have been required to move on campus with an increase in dormitory fees.

"COMMENT: Thus the campus will become a concentration camp controlled and contained by the legislation of the *racist dogs* downtown, the acts of the *puppet administrators*, the billy clubs and guns of *Nashville's racist cops*, and ultimately the gestapo tactics of the *honorable national guard*, whose pale faces have already been seen in Memphis, Nashville, Chattanooga.

"No longer can we as intelligent human beings allow others to make a charade of democratic principle by submitting to the tyranny of a dictatorial administration. Let it be resolved that . . .

"1. We as students of this university will not allow ourselves to be herded into concentration camps disguised as the 'university campus.'

"2. We, as intelligent black students, will not be guarded by trembling, powerless idiots who call themselves administrators.

"3. We, as black human beings will not be recorded in the pages of history as an ununified race of people, exterminated by the guns of submission and hate.

"A generation of inactivity has given today's black students [a] responsibility of informing and uniting our fellow classmates so that we can fight to remove the injustices directed against us as black people.

"CAST YOUR VOTE FOR *STUDENT POWER ! ! !* BOYCOTT REGISTRATION SEPTEMBER 23 AND FOR AS LONG AS THE PUPPET ADMINISTRATION REFUSES TO ACKNOWLEDGE THAT THIS IS *OUR* UNIVERSITY!

SNCC."